S. Hrg. 98-186

1983-84 MISCELLANEOUS TAX BILLS—I

HEARING

BEFORE THE

SUBCOMMITTEE ON
TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 249 and S. 825

APRIL 29, 1983

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1983-84 MISCELLANEOUS TAX BILLS—I

FRIDAY, APRIL 29, 1983

U.S. SENATE,
COMMITTEE ON FINANCE,
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood and Bentsen.

[The press release announcing the hearing, the prepared statement of Senator Bentsen the text of bills S. 249 and S. 825 and the description of the bills by the Joint Committee on Taxation follows:]

[Press Release No. 83-124]

SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT SETS HEARINGS ON S. 249 AND S. 825

Senator Bob Packwood, Chairman of the Subcommittee on Taxation and Debt Management of the Committee on Finance, announced today that the Subcommittee will hold hearings on two bills, S. 249 and S. 825, on Friday, April 29, 1983.

The hearing will begin at 9:30 a.m. in Room SD-215 of the Dirksen Senate Office Building.

The following legislative proposals will be considered:

S. 249.—Introduced by Senators Packwood, Bentsen, Symms, Boren and Durenberger. S. 249, makes permanent and extends the exclusion from income for amounts paid under educational assistance programs.

S. 825.—Introduced by Senator Bentsen. S. 825 would exclude income from the sale of membership lists from the unrelated business income tax on nonprofit organizations.

PREPARED STATEMENT OF SENATOR BENTSEN

Mr. Chairman, thank you for scheduling this hearing and providing these witnesses an opportunity to testify on the legislation which I have introduced. I believe that it is important that we gain prompt Finance Committee approval of S. 825, because it addresses an issue of paramount concern to nonprofit, charitable organizations.

Tax-exempt organizations, such as those represented here today, depend on donor and membership lists to solicit tax-deductible donations. These contributions pay for the services that these groups provide to a wide-range of citizens, from disabled veterans to kidney patients. Without my proposed revision in the tax law, the continued effectiveness and existence of these charitable groups is in jeopardy.

Many of these groups face severe funding problems in the future because current law holds that the rental or exchange of donor lists earns them unrelated business income that is subject to federal taxation. My bill clarifies that the income derived from the exchange or rental of these lists is exempt from the unrelated business income tax because this income is directly related to the nonprofit charter of Section 501 charitable organizations.

Mr. Chairman, the unrelated business income provision is an important component of our tax law; it eliminates any unfair advantage that tax-exempt organizations might otherwise enjoy over taxable competitors. Consequently, I seek to amend this section only after careful analysis of the current situation.

These tax-exempt charities serve merely as a conduit between those persons who chose to support certain services financially, and those persons who often depend on the availability of those services for survival. The income derived from matching the funds with the need is clearly related to the nonprofit intent of these organizations.

Mr. Chairman, once gain I appreciate this opportunity to speak before the Subcommittee on Taxation and Debt Management. I look forward to hearing from our distinguished guests today, and I urge prompt and favorable action by the Committee on this legislation.

98TH CONGRESS
1ST SESSION

S. 249

Entitled the "Employee Educational Assistance Extension Act".

IN THE SENATE OF THE UNITED STATES

JANUARY 27 (legislative day, JANUARY 25), 1983

Mr. PACKWOOD (for himself, Mr. BENTSEN, Mr. SYMMS, Mr. BOREN, and Mr. DURENBERGER) introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

Entitled the "Employee Educational Assistance Extension Act".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MODIFICATION OF EXCLUSION FROM GROSS INCOME OF EDUCATIONAL ASSISTANCE.

(a) EDUCATIONAL ASSISTANCE FOR SPOUSES AND DEPENDENTS OF EMPLOYEES.—

(1) IN GENERAL.—Subsection (a) of section 127 of the Internal Revenue Code of 1954 (relating to educational assistance programs) is amended by inserting

", his spouse, or his dependents" after "employee" the second place it appears.

(2) CONFORMING AMENDMENTS.—

(A) Section 127(b)(1) of such Code is amended by inserting ", their spouses, or their dependents" after "employees" the second place it appears.

(B) Section 127(c)(1) of such Code is amended by inserting ", his spouse, or his dependents" after "employee" each place it appears.

(b) ELIMINATION OF PROHIBITION OF OTHER BENEFITS AS AN ALTERNATIVE.—

(1) IN GENERAL.—Subsection (b) of section 127 of such Code is amended by striking out paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively.

(2) CONFORMING AMENDMENT.—Section 127(b)(1) of such Code is amended by striking out "(6)" and inserting in lieu thereof "(5)".

(c) ELIMINATION OF DISALLOWANCE OF PAYMENTS FOR MEALS, LODGING, OR TRAVEL.—Section 127(c)(1) of such Code is amended by deleting ", or meals, lodging, or transportation".

(d) CLARIFICATION OF DEDUCTION TO EMPLOYER.—Paragraph (7) of section 127(c) (relating to disallowance of excluded amounts as credit or deduction) is amended—

(A) by striking out "shall be allowed" and inserting in lieu thereof "shall be allowed to the employee", and

(B) by striking out "excluded from income" and inserting in lieu thereof "excluded from the gross income of the employee".

(e) ELIMINATION OF TERMINATION DATE FOR EXCLUSION OF EDUCATIONAL ASSISTANCE FROM GROSS INCOME.—Subsection (d) of section 127 of such Code is repealed.

(f) The amendments made by subsections (a) through (d) shall apply to taxable years beginning after December 31, 1985.

98TH CONGRESS
1ST SESSION

S. 825

To amend the Internal Revenue Code of 1954 with respect to the unrelated business taxable income of certain nonprofit charitable organizations.

IN THE SENATE OF THE UNITED STATES

MARCH 16 (legislative day, MARCH 14), 1983

Mr. BENTSEN introduced the following bill; which was read twice and referred to the Committee on Finance

---

A BILL

To amend the Internal Revenue Code of 1954 with respect to the unrelated business taxable income of certain nonprofit charitable organizations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 513 of the Internal Revenue Code of 1954 (relating to unrelated trade or business) is amended by adding at the end thereof the following new subsection:

"(h) CERTAIN EXCHANGES, RENTALS AND SALES OF NAMES FROM DONOR LISTS OR MEMBERSHIP LISTS.—In the case of an organization described in section 501 contributions to which are deductible under section 170, the term 'trade or business' does not include any trade or business of such organization which consists of exchanging, renting, or selling names and addresses of donors to, or members of, such organization.".

(b) The amendment made by subsection (a) shall apply to taxable years ending after the date of the enactment of this Act.

DESCRIPTION OF TAX BILLS
(S. 249 and S. 825)

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND
DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE

ON APRIL 29, 1983

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

INTRODUCTION

The bills described in this pamphlet have been scheduled for a public hearing on April 29, 1983, by the Senate Finance Subcommittee on Taxation and Debt Management.

There are two bills scheduled for the hearing: S. 249 ("Employee Educational Assistance Extension Act") and S. 825 (exemption from unrelated business income tax for sales of membership lists by certain organizations).

The first part of the pamphlet is a summary of the bills. This is followed by a more detailed description of the bills, including present law, explanation of provisions, and effective dates.

I. SUMMARY

1. S. 249—Senators Packwood, Bentsen, Symms, Boren, Durenberger, Moynihan, and Pryor, and others

"Employee Educational Assistance Extension Act"

Under present law, an employee's gross income does not include amounts paid or expenses incurred by the employer for educational assistance to the employee pursuant to a program that meets certain requirements (Code sec. 127). This provision is to expire for taxable years beginning after 1983.

The bill would make permanent the exclusion from gross income for amounts paid to, or on behalf of, an employee under a qualified educational assistance program. In addition, the bill would expand the exclusion to cover amounts under a qualified program for educational assistance to the employee's spouse and dependents, and would eliminate the provision under present law that makes the exclusion unavailable if the employee has a choice between educational assistance and taxable benefits. Also, meals, lodging, and transportation expenses incurred under a qualified program would become eligible for the exclusion under the bill. These modifications to the exclusion would be effective for taxable years beginning after 1983.

2. S. 825—Senator Bentsen

Exemption From Unrelated Business Income Tax for Sales of Membership Lists by Certain Organizations

Under present law, certain organizations are generally exempt from Federal income tax because of their religious, charitable, educational, or other nonprofit purposes. However, present law (secs. 511-514) imposes tax on the unrelated business taxable income of tax-exempt organizations, i.e., on gross income derived by the organization from any unrelated trade or business regularly carried on by it, less allowable deductions directly connected with the carrying on of such trade or business, both subject to certain modifications. An unrelated trade or business is any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption.

In the case of any tax-exempt organization which is eligible to receive tax-deductible charitable contributions, the bill would exclude from the tax on unrelated business taxable income any income from exchanging, renting, or selling names and addresses of donors to, or members of, such organization. The provisions of the bill would be effective for taxable years ending after the date of enactment.

II. DESCRIPTION OF BILLS

1. S. 249—Senators Packwood, Bentsen, Symms, Boren, Durenberger, Moynihan, and Pryor, and others

"Employee Educational Assistance Extension Act"

Present Law

General rule

Under present law, amounts paid or expenses incurred by an employer for educational assistance provided to an employee are excluded from the employee's gross income if paid or incurred pursuant to a written plan that meets certain requirements and is for the exclusive benefit of the employees (sec. 127). The exclusion applies whether or not the education paid for, or furnished by, the employer is related to the employee's job.

Excludable benefits

Under this provision, an employee can exclude from income educational assistance provided to him or her, but not the value of any assistance provided to the employee's spouse or dependents. Excludable amounts include tuition, fees, and similar expenses, as well as the cost of books, supplies, and equipment paid for, or provided by, the employer. (The exclusion is not available for the cost of tools or supplies provided by the employer if the employee may retain such tools or supplies after completion of the course of instruction.) However, meals, lodging, or transportation may not be excluded under this provision. The exclusion does not apply to educational assistance furnished for courses involving sports, games, or hobbies, unless the education provided involves the business of the employer.

For a program to qualify under this provision, the employee must not be able to choose taxable benefits in lieu of educational assistance benefits. In administering this rule, the business practices of an employer, as well as the written program, are to be taken into account. A qualified educational assistance program need not be funded or approved in advance by the Internal Revenue Service.

The employee may not claim a deduction (e.g., a business expense deduction) or a credit with respect to any amount that is excluded from income under this provision.

Nondiscrimination requirements

For the exclusion to be available, the educational assistance program also must meet certain requirements with respect to nondiscrimination in eligibility.

The program must benefit employees who qualify under a classification set up by the employer and found by the Revenue Service not to be discriminatory in favor of employees who are officers, owners, highly compensated individuals, or their dependents. The program must be available to a broad class of employees, rather than to a particular individual. However, employees may be excluded from a program if they are members of a collective bargaining unit and there is evidence that educational assistance benefits were the subject of good faith bargaining between the unit representatives and the employer or employers offering the program.

A program is not considered discriminatory merely because it is utilized to a greater degree by one class of employees rather than by another class or because successful completion of a course, or attaining a particular course grade, is required for, or considered in, determining reimbursement under the program.

The exclusion does not apply if the share of benefits received by certain employees under the program exceeds a specified level. Specifically, the benefits are not excludable if more than five percent of the benefits are paid to shareholders or owners (or their spouses or dependents, who are employees), each of whom (on any day of the year) owns more than five percent of the stock or of the capital or profits interest in the employer.[1]

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

Treatment of self-employed individuals

An individual who qualifies as an employee within the definition of section 401(c)(1) also is an employee for purposes of these provisions. Thus, in general, the term employee includes self-employed individuals who have earned income for the taxable year, or any prior taxable year, as well as individuals who would have earned income except that their trades or businesses did not have net profits for the taxable year.

An individual who owns the entire interest in an unincorporated trade or business is treated as his or her employer. A partnership is considered the employer of each partner who is also an employee of the partnership.

Payroll tax treatment

Amounts excluded from income as educational assistance are not treated as wages subject to social security (FICA) or unemployment insurance (FUTA) taxes.

Expiration date

This provision is to expire for taxable years beginning after December 31, 1983.

---

[1] For determining stock ownership in corporations, this provision uses the attribution rules provided under subsections (d) and (e) of section 1563 (without regard to sec. 1563(e)(3)(C)). Ownership interests in unincorporated trades or businesses are to be determined, under regulations, on the basis of similar principles.

Explanation of the Bill

The bill would make permanent the present-law exclusion from gross income of educational assistance provided to an employee under a qualified program of the employer.

In addition, the bill would make the following four changes in the rules defining a qualified educational assistance program—

(1) The bill would permit an employee's spouse and dependents to receive educational assistance without inclusion of any amount in the employee's income for such benefits;

(2) The provision of present law that prevents an employee from having a choice between excludable educational assistance and taxable benefits would be repealed;

(3) Meals, lodging, and transportation expenses under a qualified program would become eligible for the exclusion; and

(4) The bill would clarify that the provision prohibiting a deduction or credit for amounts excluded from an employee's gross income only applies to a deduction or credit of the employee.

Effective Date

The changes made by the bill are intended to apply to taxable years beginning after December 31, 1983.[2]

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[2] The bill as introduced contains a typographical error. The intended effective date is December 31, 1983, rather than 1985.

2. S. 825—Senator Bentsen

Exemption from Unrelated Business Income Tax for Sales of Membership Lists by Certain Organizations

Present Law

General rule

Under present law, certain organizations are generally exempt from Federal income tax because of their religious, charitable, educational, or other nonprofit purposes and functions. However, in light of examples of tax-exempt organizations which had been acquiring and operating, on a tax-free basis, businesses unrelated to their exempt purposes or functions, the Congress enacted the unrelated business income provisions in 1950. These provisions (Code secs. 511-514) impose a tax on the unrelated business income of exempt organizations, primarily in order to remove any unfair advantage which tax-exempt organizations otherwise would have over taxable competitors (S. Rep. No. 2375, 81st Cong., 2d Sess. 28-29 (1950)).

The tax applies to gross income derived by the organization from any unrelated trade or business regularly carried on by it, less allowable deductions directly connected with the carrying on of such trade or business, both subject to certain modifications. Under one such modification (sec. 512(b)(2)), dividends, interest, annuities, royalties, and, generally, rents from real property are exempted from the tax. (There are special rules with regard to rents from personal property leased with real property.)

Definition of unrelated business

Under present law, an unrelated trade or business is defined as any trade or business of a tax-exempt organization the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption.

In 1972, the Internal Revenue Service ruled that the regular sale of membership or mailing lists by an exempt educational organization to business firms and universities constitutes an unrelated trade or business (Rev. Rul. 72-431, 1972-2 C.B. 281). The Revenue Service cited Treas. Reg. § 1.513-1(d)(4)(iv) as recognizing that activities carried on by an organization in the performance of exempt functions may generate good will or other intangibles which may be exploited in commercial endeavors. If an organization exploits such an intangible in commercial activities, the regulations provide, the mere fact that the resultant income depends in part upon an exempt function of the organization does not make it gross income from a related trade or business.

Similarly, the U.S. Court of Claims held in 1981 that income received by an exempt organization from other exempt organizations and commercial businesses for the use of mailing lists constitutes unrelated business taxable income, and does not constitute "royalties" expressly exempted from the tax under section 512(b)(2) (*Disabled American Veterans* v. *U.S.*, 650 F.2d 1128 (1981)). The court found that in renting its donor lists, the DAV operated in a competitive, commercial manner with respect to taxable firms in the direct mail industry; that these rental activities were regularly carried on; and that the rental activities were not substantially related to accomplishment of exempt purposes (apart from the organization's need for or use of funds derived from renting the mailing lists).

Explanation of the Bill

In the case of any organization exempt from tax under section 501 which is eligible to receive tax-deductible charitable contributions under section 170,[1] the bill would exclude from the term unrelated trade or business any trade or business of such organization that consists of exchanging, renting, or selling names and addresses of donors to, or members of, such organization.

Effective Date

The provisions of the bill would be effective for taxable years ending after the date of enactment.

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[1] Specifically, Code sec. 170(c) defines charitable contributions as including contributions or gifts to or for the use of: (1) certain religious, charitable, or educational organizations in the United States; (2) certain organizations of war veterans and their auxiliary units; (3) certain fraternal organizations, if the gift is used exclusively for religious, charitable, or educational purposes; (3) certain nonprofit cemetery companies; and (4) the United States or any of its political subdivisions.

Joint Committee on Taxation
April 29, 1983
(supplement to JCS-9-83)

REVENUE ESTIMATES FOR S. 249 AND S. 825

(Scheduled for a Hearing before the
Senate Finance Subcommittee on Taxation and Debt Management
on April 29, 1983)

1. S. 249--Senators Packwood, Bentsen, Symms, Boren, Durenberger, Moynihan, and Pryor, and others

"Employee Educational Assistance Extension Act"

(Fiscal Years, Millions of Dollars)

	Provision	1984	1985	1986	1987	1988
a.	Make permanent present-law exclusion for educational assistance benefits to employees	-25	-43	-46	-50	-54
b.	Repeal provision precluding choice between educational assistance and taxable benefits	-5	-9	-10	-10	-11
c.	Expand exclusion (after above modifications) to cover benefits for employee's spouse and dependents	-12	-30	-49	-60	-65
d.	Expand exclusion to cover value of meals, lodging, and transportation under qualified program	(1)	(1)	(1)	(1)	(1)
	TOTAL	-45	-85	-108	-123	-133

1/ Loss of less than $5 million (for totalling purposes, counted as loss of $3 million).

Senator PACKWOOD. Mr. McKee, I am going to let Senator Bentsen put a statement in first, and we are waiting for the statement to come. When it gets here, he will say it and we will call you.

Mr. McKEE. All right, Mr. Chairman.

[Pause.]

Senator PACKWOOD. Mr. McKee there may be some delay with Senator Bentsen's statement, we will go ahead and start with you. When Senator Bentsen's material gets here we will call on him.

I might indicate again to you and to all of the witnesses your statements in their entirety will be in the record. I would appreciate it if you would abbreviate them. Go right ahead.

STATEMENT OF HON. WILLIAM S. McKEE, ACTING DEPUTY ASSISTANT SECRETARY FOR TAX POLICY, DEPARTMENT OF THE TREASURY, WASHINGTON, D.C.

Mr. McKEE. Mr. Chairman, Senator Bentsen, I am pleased to present the views of the Treasury Department on S. 249, which would make permanent and broaden the exclusion from income for amounts paid by employers under educational assistance programs, and S. 825, which would exempt from the tax on unrelated business income the income from the sale, exchange or rental of donor or membership lists by certain tax exempt organizations. The Treasury Department opposes both of these bills.

Turning first to S. 249, the extension and expansion of tax free educational assistance programs. For years after 1978 and before 1984, section 127 provides an exclusion from an employee's gross income for educational assistance furnished by an employer under a qualified educational assistance program. In order to qualify, the assistance must be for the exclusive benefit of employees. The courses cannot be about sports, hobbies or similar items, and there can be no reimbursement for meals, lodging or transportation expenses. The assistance cannot be offered under a cafeteria plan, and it cannot discriminate in favor of highly compensated employees.

The purpose of section 127 as presently in effect is to expand the ability of employers to provide educational assistance to employees. Without section 127, the Internal Revenue Service had ruled that an employee could exclude from income in-house educational programs or direct payments to educational institutions if, but only if, the educational assistance was with respect to job-related subjects that would improve or maintain an employee's skills.

If the assistance was paid in cash directly to the employee, the employee might have the payment qualify as a scholarship or fellowship under section 117 or, more likely, might be able to deduct the amount as a job-related educational expense. Section 127 as currently in effect expands the category of educational expenses that are effectively tax free to employees by removing the job-related requirement. As currently in effect, section 127 is fairly carefully crafted to achieve its educational goal and steers the educational assistance towards job-related subjects by providing that the assistance must be nondiscriminatory, by providing that no meals, lodging, and transportation expenses can be included, by prohibiting assistance for courses dealing with sports, games and hobbies, and by eliminating the ability to have cafeteria plan participation.

The limitations of 127 tend to push these programs into situations in which the employer is serious about providing educational assistance to its employees, and the more serious the employer is the more likely it is that the educational assistance will be job related.

S. 249 has four major features. It makes section 127 permanent. It expands coverage from employees to their spouses and dependents. It expands covered amounts to include meals, lodging, and transportation expenses, and it expands 127 to permit participation in cafeteria plans.

The Treasury opposes section 249 for three principal reasons. First, the degree to which education is funded with pretax dollars should not depend upon whether or not your employer happens to have a section 127 plan. If the concern here is that the section 162 job-related test is too tight, it should be amended for all taxpayers, not just for taxpayers who happen to be employed by companies that happen to have these plans.

Second, as now drafted, S. 249 is simply another tax-free fringe benefit for a particular special class of taxpayers, that is, employees of corporations that happen to have 127 plans, and, thus, like all fringe benefits, is worth more to those with high incomes. It is hardly sound education policy to provide the greatest benefits to those with the least need.

Third, Treasury is becoming increasingly concerned about the growing revenue loss caused by tax-free fringe benefits, whether by statute or because of the growth of tax-free fringe benefit practices, due to the protection afforded these practices under the current congressional moratorium on fringe benefit regulations.

S. 249 would cost about $542 million over the next 5 calendar years.

I turn now to S. 825, which provides an exemption from the unrelated business income tax for income from sales, rentals, or exchanges of names from donor or membership lists. By way of background, there are two general benefits provided in the Internal Revenue Code for nonprofit organizations. First is the charitable contribution deduction, which allows the organization to raise money on a tax favored basis. Second is the exemption from income tax for organizations conducting certain exempt activities, which allows you to conduct an activity on a tax-favored basis.

Prior to 1950, this latter tax exemption extended to all activities of exempt organizations. In 1950, Congress decided that income from unrelated business activities should not be tax free. The mere fact that the income received by the exempt organization is used for a good purpose is not enough. The income generated must be from an activity which furthers the exempt purpose of the organization or be from certain forms of investment activity. Income from commercial activities, on the other hand, must be fully taxed in order to prevent tax exempt organizations from gaining an unfair competitive advantage over their taxable competitors. S. 825 prohibits the classification of the sale, exchange, or rental of donor or membership lists as an unrelated trade or business thus, effectively exempting this income from the unrelated business income tax.

The bill only applies to organizations the contributions to which are deductible as charitable contributions.

The Treasury Department opposes S. 825 for three principal reasons. First, the activity of selling or renting names from mailing lists is a common commercial practice. Although much of the activity in question occurs among tax exempt entities, much of it is between the tax exempt sector and the fully taxable sector. Thus, the policy enunciated in 1950 by Congress of preventing the exempt sector from gaining an unfair advantage over the taxable sector clearly applies here. Selling names is not part of an organization's exempt activity. It is merely a way to raise money to fund the exempt activity.

Second, an exchange of lists among exempt organizations merely masks the sale aspect of the transaction, just as we see in the case of barter exchanges. The transaction is identical to a sale for cash and a purchase for cash, but since both parties in the transaction are both a buyer and a seller, no cash is required. In other words, an exchange between two tax exempt entities, which, on the surface, might appear quite benign, is really economically identical to a sale for cash to one organization and then taking the money and purchasing the names from another organization.

Senator PACKWOOD. But that is no different than the bartering of services between individuals.

Mr. MCKEE. That is correct. And, therefore, whatever rule applies to sales ought to apply equally to exchanges. Since the Treasury views tax-free sales as being prohibited here because of their anticompetitive nature, which flies in the face of the stated congressional purpose for the unrelated business income tax, tax-free exchanges should be prohibited also.

Finally, the argument that renting or exchanging the lists is necessary to maintain a list is simply incorrect. The selling of these names does not add names to a list. It is the cash that you get that you can turn around and use to acquire names that makes the list grow. We don't object to making the list grow by taking your money and buying names. We object to profiting from the sale of your existing list in order to generate cash. We, therefore, see no reason to provide any exemption from the long established policy of taxing unrelated business income in this particular case. That concludes my remarks. I would be happy to answer any questions.

[The prepared written statement of Mr. McKee follows:]

For Release Upon Delivery
Expected at 9:30 a.m. EDT
April 29, 1983

STATEMENT OF
WILLIAM S. McKEE
ACTING DEPUTY ASSISTANT SECRETARY
(TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE SENATE FINANCE COMMITTEE

Mr. Chairman and Members of the Committee:

I am pleased to present the views of the Treasury Department on S. 249, which would make permanent and broaden the exclusion from income for amounts paid by employers under educational assistance programs, and S. 825, which would exempt from the tax on unrelated business income the income from the sale, exchange, or rental of donor or membership lists by certain tax-exempt organizations.

The Treasury Department opposes both of these bills.

S. 249

Extension and Expansion of Tax-Free Educational Assistance Programs

Background

Effective for taxable years beginning after 1978 and before 1984, section 127 of the Internal Revenue Code provides an exclusion from an employee's gross income for educational assistance furnished by an employer under a qualified educational assistance program. In order to qualify for this exclusion, the program must meet a number of requirements. First, the educational assistance must be provided for the exclusive benefit of employees. Second, the courses offered cannot involve sports, games, or hobbies, nor can the program reimburse employees for meals, lodging, or transportation expenses. Third, the educational benefits cannot be offered under a "cafeteria" plan that gives the employee an option to receive, as an alternative to educational benefits, other remuneration which is includible in gross income. Finally, the classification of employees eligible for benefits must not discriminate in favor of officers, owners or highly-compensated employees. Although program utilization rates will not cause a program to be disqualified for discrimination, no more than 5 percent of plan benefits can be paid to owners of more than 5 percent of the business (or to their spouses or dependents).

Code section 127 was enacted in 1978 to enlarge the ability of employers to provide tax-free educational assistance to their employees. Prior to the enactment of section 127, the Internal Revenue Service had ruled that employees could exclude from income the value of educational assistance provided by employers through either direct payments to educational institutions or in-house educational programs, if the courses of instruction were limited to job-related subjects that would improve or maintain an employee's skills. (See Rev. Ruls. 76-62, 76-65 and 78-184.) Any educational assistance payments made directly to an employee were required to be included in gross income (unless the payments qualified as a scholarship or fellowship under section 117). Once such payments were included in income, the employee could deduct the educational expenses as business expenses under section 162, provided that he could establish that the expenses were for "job-related" education. Job-related education was defined as education that (1) maintains or improves skills required in the individual's employment or (2) meets the employer's express conditions as to the employee's retention of his job, job status, or rate of compensation. (See Treas. Regs. §1.162-5 and Rev. Ruls. 76-65 and 76-71.) No deduction was permitted for personal expenditures for education that would qualify the employee for another trade or business.

By enacting section 127 in 1978, Congress eliminated the need to distinguish on a case-by-case basis between "job-related" and "personal" education whenever either cash payments or educational courses are provided to employees under qualified educational assistance programs. Treasury opposed the enactment of section 127 in 1978, on grounds that equity requires that compensation received in the form of educational benefits (whether paid in kind or in cash) should be taxed the same as any other type of compensation received by employees. The Treasury statement noted that any exemption for certain types of income only encourages employees to rearrange their affairs so that compensation is received in a non-taxable form. Treasury also pointed out that any problems with the rules under section 162 for deducting educational expenses should be addressed directly by modifying those rules for all taxpayers rather than by creating a special exclusion from gross income for employer-provided educational benefits.

The limitations on qualified educational assistance programs under section 127 tend to increase the likelihood that the educational benefits will bear some relation to the employee's present or future job. For example, because Code section 127 requires the program benefits to be made available on a nondiscriminatory basis to employees only, employers are prevented from providing tax-free educational benefits exclusively to one or two officers, owners, or highly paid individuals, or to the family members of employees. Moreover, because the statute defines tax-exempt "educational assistance" to exclude expenses for meals, lodging, transportation, or courses involving sports, games, or hobbies, employees are required to justify any deduction for those expenses under the pre-existing requirements of section 162. Those rules allow a deduction for meals, lodging and transportation only in instances where the expenses were incurred "primarily" to obtain a job-related education, and generally deny a deduction for courses involving entertainment or athletic pursuits.

Another significant requirement of present section 127 prevents qualified educational benefits from being offered as part of a cafeteria plan. This limitation helps assure that tax-qualified educational assistance programs will be operated on the basis of employer contributions, rather than elective employee contributions. Therefore, it is more likely that the educational assistance will be provided for courses at least tangentially related to the employees' jobs.

S. 249

S. 249 would eliminate the 1984 sunset of section 127 and would extend the provision permanently. In addition, for taxable years beginning in 1984, the bill would delete most of the statutory protections against abusive operation of these educational assistance plans. Under the proposed amendments to the existing rules, tax-free educational benefits could be provided under section 127 plans not only to employees, but also to their spouses and dependents. Another amendment would expand the definition of educational assistance to cover reimbursements for meals, lodging, or transportation, in addition to tuition, fees, books, supplies and equipment. The final amendment would permit educational assistance to be offered as an alternative to taxable benefits, thus allowing employees more flexibility in converting taxable wages into educational assistance which is exempt not just from income tax, but from FICA and FUTA taxes as well.

Discussion

The Treasury Department strongly opposes S. 249. The rules under section 162 governing deductibility of educational expenses should be applied equally to all individuals. The regulatory "job-related" test can never be adequately replaced by any set of statutory rules which exempt certain educational benefits simply because they are paid for by an employer. Despite the fact that the bill has been described as one primarily designed "to encourage the self-improvement on a non-discriminatory basis of women, members of minority groups, and unskilled workers," taxpayers with the highest incomes will receive the greatest benefits from the income exclusion. National education policy should not be created in such a manner that those with the least needs receive the greatest benefits.

The changes to the current section 127 rules proposed by S. 249 would permit, in effect, unlimited amounts of tax-free income to be used for educational expenses by individuals whose employers adopt section 127 plans. Treasury strongly opposes these changes as costly, uneconomic and inequitable expansions of the availability of tax-free fringe benefits. We are seriously concerned about the growing revenue loss to the government caused by the increasing substitution for cash wages of fringe benefits which are tax-free by statute or are perceived to be tax-free under the Congressional moratorium on fringe benefit regulations. The fringe benefit that would be provided by S. 249 would produce a revenue loss of $542 million over the next five calendar years. Moreover, the proliferation of untaxed fringe benefits distorts the allocation of economic resources and discriminates against individuals who are not employed by employers that provide such tax-favored forms of compensation. Under no circumstances would Treasury favor an expansion of the list of statutory fringe benefits to include unlimited amounts of tuition and education-related meals, lodging and transportation, particularly if such payments could be financed by the employee under a cafeteria or flexible benefit plan.

To summarize, Treasury strongly opposes S. 249, which not only makes permanent the existing exclusion for employer-provided educational expenses, but also expands the class of program beneficiaries, the source of program financing, and the types of benefits which can be provided on a tax-free basis.

S. 825

Exemption from Unrelated Business Income Tax for Sales, Rentals, or Exchanges of Names from Donor and Membership Lists

Background

The Internal Revenue Code contains numerous special provisions designed to promote certain activities ("exempt activities") of nonprofit organizations that provide substantial public benefit. These special provisions include (i) deductions from income for amounts contributed to or for the use of specified organizations that conduct the exempt activities and (ii) exemption from income taxation for organizations conducting such activities. These two benefits serve distinct purposes. The deduction allowed for contributions to the specified organizations is intended to assist the organizations in obtaining the financial support necessary to conduct the exempt activities. The income tax exemption for the organization is intended to permit the organization to conduct exempt activities without incurring any Federal income tax liability.

Prior to 1950, the tax exemption of organizations conducting exempt activities extended to all income received, whether from the conduct of exempt or nonexempt activities. Furthermore, prior to 1950, it was unclear whether a "feeder" organization that carried on a trade or business for profit as its primary activity and paid all its income to a tax-exempt organization could qualify for exempt status. In 1950, Congress enacted legislation that imposed a tax on income received by exempt organizations from unrelated business activities and denied exempt status to "feeder" organizations. Since the 1950 legislation, it has been clear that the receipt of income is not entitled to exemption from taxation solely because the income will be used for exempt purposes. Rather, exemption of income from taxation depends upon the nature of the activity that produces the income. For example, income generated by activities that further exempt purposes and income generated by certain forms of investment activity traditionally engaged in by tax-exempt organizations are not subject to taxation. The tax on unrelated business income, however, clearly distinguishes income generated by commercial activities from income earned through exempt purpose activities and traditional forms of investment. The primary purpose for taxing income from commercial activities of tax-exempt organizations and income of "feeder" organizations is to equalize the tax treatment of commercial, nonexempt activities, regardless of the type of entity that conducts the activity. This prevents tax-exempt organizations from gaining unfair advantage over their taxable competitors by trading on their tax exemptions.

S. 825

S. 825 would exempt from the unrelated business income tax income from the sale, exchange, or rental by certain tax-exempt organizations of names of donors to, or members of, the organizations. The bill accomplishes this by prohibiting the treatment of such activities as a trade or business for purposes of defining an unrelated trade or business. The bill applies only to sales, exchanges, or rentals by organizations, contributions to which are deductible as charitable contributions.

Discussion

The activities of selling or renting names from mailing lists is a common commercial practice engaged in by many taxable entities as well as by tax-exempt organizations. While most of the income earned by tax-exempt organizations from sales or rentals of their donor or membership lists may be received from other tax-exempt organizations, these transactions are conducted in a commercial manner similar to the manner in which taxable entities sell or rent mailing lists. Furthermore, sales and rentals of donor, membership, and mailing lists also occur between taxable and tax-exempt organizations. Therefore, it is clear that the sale or rental of such lists is a commercial activity. As such, we consider it appropriate for income from such activity to be subject to taxation.

When an organization exchanges its donor or membership list with another organization, it is in effect selling or receiving rent for its list and purchasing or paying rent for the other organization's list. The fact that payment is made in kind rather than in cash does not change the essentially commercial nature of the sale or rental activity.

The argument made in support of exempting income from sales, rentals, or exchanges of donor lists from the unrelated business income tax is that such sales, rentals, or exchanges are necessary to maintain the lists. We recognize that, because of attrition, an organization must regularly add new names to maintain its donor lists. Nevertheless, the sale or rental of the donor list to others does not provide the organization with such new names. Of course, the sale or rental becomes associated with the acquisition of new names where the income from the commercial activity is used to buy or rent lists of other organizations or where the sale or rental is accomplished through an exchange of lists. However, as discussed above, the policy is well established that it is the nature of the activity that produces the income, not the use to which the income is dedicated, that determines whether exemption should be granted. The Treasury Department opposes exemption from the unrelated business income tax of income from the sale, rental, or exchange of donor or mailing lists because such an exemption would be directly contrary to this established principle. We do not believe the tax law should be changed to give tax-exempt organizations a competitive advantage in the business of selling, renting, or exchanging donor or membership lists.

This concludes my prepared testimony. I would be happy to respond to your questions.

Senator PACKWOOD. Senator Bentsen.

Senator BENTSEN. First, Mr. Chairman, I would like to put my statement in the record in its entirety.

Senator PACKWOOD. It will be in at the start of the hearing.

Senator BENTSEN. And then I would like to Treasury what I am doing here is trying to very narrowly define the exemption to 501(c) groups that receive section 170 deductible contributions. And I think it clearly is a situation where it is being used to try to help things like kidney patients, disabled veterans. It has been substantially narrowed in its definition. And I would like to hear your comments concerning that.

Mr. MCKEE. Well, Senator, we don't doubt that the beneficiaries of this bill perform socially worthy causes. That is not the issue. The issue is whether or not a particular class of exempt organizations should be allowed to engage in commercial activities on a tax-free basis. We appreciate the fact that your bill narrows the coverage of the exemptions to those organizations that receive charitable contributions which are deductible. There is no question that Congress has distinguished between classes of exempt organizations. Those that are entitled to receive contributions on a tax deductible basis by the contributors are clearly in a higher, more preferred class. What your bill does, it seems to us, is to say, well, this is a preferred class, a particularly good group of people, and we want to provide them with an additional benefit, that is, we want to allow them to engage in a particular commercial activity, selling membership lists, without paying tax on income from that activity. The difficulty is that it is still a deviation from the clear congressional policy which we have lived with since 1950, which says that exempt organizations should not be allowed to compete with taxable organizations on a favored basis. And the buying and selling of names and membership lists is a commercial activity that exists in the private sector—it has been around for a long time—and, unfortunately, this bill admittedly, with certain restrictions—will allow competitive activity to go on on a pretax basis which will provide these organizations with a leg up on their taxable competitors.

Senator BENTSEN. Well, I would have to say as a matter of social policy, with the utilization of the funds as they are used, I am going to continue to press obviously for passage of this legislation, making an appropriate change in congressional intent if it is that kind of a change. Thank you very much, Mr. Chairman.

Senator PACKWOOD. I am going to support Senator Bentsen, and I think it ought to be extended to some of the 501(c)(4) organizations also. I think the Treasury paints with too broad a brush.

I went to New York University School of Law, and they may have been partially responsible for the tightening of the law in the early 1950's because they owned Mueller Macaroni which no one ever seriously claimed was related to the educational purpose of the law school. And it produced a great deal of profit for the law school, which was not at the time taxed. But when it comes to these mailing lists, these have not become a serious source of income for these organizations until the last 3 or 4 or 5 years. We didn't raise, with a few exceptions—perhaps Boys Town and a couple of others—great quantities of money by direct mail. You didn't have great mailing lists. Really, it was the advent of the computer that made that possible. And I think it is fair to say that the income that they receive from the rental of their mailing lists is very closely correlated to their purpose. And my hunch would be there will not be an organization that appears before us today, whether it is the DAV or the American Kidney Fund or the Epilepsy Foundation or AMVETS or any other, that realizes significantly more money from renting their lists than they actually do from mailing them themselves for resolitication of donors that have previously given. And the rental is really a secondary or tertiary activity in the hopes of increasing their funds for purposes that this Government has legitimately said are worthwhile social purposes, and that this administration is more and more saying purposes that ought to be done by the private sector. And, indeed, they are the private sector.

Mr. McKEE. We don't disagree at all that the purposes are worthy, Senator. It's simply that Congress has drawn a line, and we think the line that was drawn was a sound line, which is an attempt to have competition proceed on a fair basis while providing that if an income-producing activity is part of your exempt activity, you don't have to pay tax on it. These activities fall on the wrong side of the line, unfortunately from the point of view of the organizations. We just don't think the case has been made to move the line. We understand that a lot of exempt organizations would like to have the income from the Mueller Macaroni Co. be tax-free so that they could go out and do more worthy things. There's no question that that would be the effect.

Senator PACKWOOD. But I think, Mr. McKee, you have to draw a rational line. It is one thing for AMVETS to go out and buy a downtown office building, and act as a commercial landlord, and say that the rents are related to the purpose for AMVETS. I don't think either Senator Bentsen or I would say that has that close a relation or nexus. But regarding their mailing lists, it is so critical to their own fund raising purposes. I don't mean renting them; I mean soliciting their own members. And the fact that they are able to produce a slight amount more of income by renting them I think is infinitely more related to their purpose and ought to be exempt than if they were to go into normal commercial activities that had no purpose other than raising money for the organization.

Mr. McKee. There is no question that the asset in question here is a unique asset in the sense that the asset is employed in the exempt function. But it is not that different than the Xerox machine in the office that is legitimately employed in the exempt function but that happened to have a little extra capacity that was rented out.

The problem we have is the actual activity of renting out the mailing list. That activity in and of itself has nothing to do with the exempt activity. I understand your point, Senator. But as the Treasury sees it, it is just one of those things that is close to the line. It is on the wrong side, and we don't think that we ought to change the line.

Senator Packwood. Do you have any more questions, Senator Bentsen?

Senator Bentsen. No, Mr. Chairman.

Senator Packwood. Let me ask one on the educational assistance bill, S. 249, and tell me if I state the law accurately in a layman's sense. Prior to the change in 1978, if an employer provided educational benefits for an employee and those benefits were job related, they were exempt from taxation.

Mr. McKee. Correct.

Senator Packwood. But if the training prepared the employee for advancement, it was considered taxable as income.

Mr. McKee. If they were not job related in a sense, they were general curriculum courses—for example, helping them to get their college degree—then the employees would have to pay the tuition with after tax-dollars just as everyone else in our society would have to do.

Senator Packwood. Well, when you say, "job related," do you mean related to the employee's present job?

Mr. McKee. That is correct.

Senator Packwood. All right.

What we found in 1978 was that it tilted very heavily in favor of well educated, higher paid employees. If you were the vice president of IBM, you could go to one of the Brookings' seminars at $500 a week, and could probably prove that it was somehow related to the job that you held. It really didn't matter what the seminar was on if you had broad enough responsibilities as a vice president. But if you were a 19-year-old high school dropout, and were working on the assembly line of General Motors, and G.M. wanted to train you, to become a machinist and advance yourself, that was taxed as income because it was not job related. The higher up you got, the easier it was to find that it was related to your job. It seemed like not only an unfair discrimination but one inversely designed to discriminate against the lowest paid, least educated workers who were the ones most in need of training for a better job. My 1978 amendment eliminated that distinction. As I understand it Treasury, regardless of whether this law is extended to include dependents or meals, is opposed to the whole concept.

Mr. McKEE. We are certainly more opposed to the expansion of section 127, Senator. Again, as we pointed out in our testimony, we find that the existing section 127 tends to have the effect of limiting the benefits to quasi-job-related expenditures. In your example, General Motors might find it quite reasonable to train a high school dropout to be a machinist on the theory that maybe he will still work for General Motors to be a machinist. And that is not that far off from the general job-related notion. General Motors is less likely, I think, to provide general college education courses. They might, but they are less likely. They would look for something that somehow they thought they would get a payback on.

One of the big problems we have with the expansion of 127, which is the real thrust of the bill, is that it eliminates that. It seems to be a program that basically allows for tax-free educational programs.

We also like to point out that although we understand your point, and there is considerable merit to your point, one of the difficulties with the way 127 works is that the higher your tax bracket, that is, the wealthier you are, the more benefits you get, obviously, from section 127 of the code. And by expanding the category of educational assistance that comes within it, your high-paid executive doesn't have to go to Brookings any more. He can go to graduate school. And he gets a much bigger bang for the buck than your high school dropout. So while we oppose the bill, in general, for the reasons I have outlined, we are certainly much more concerned about the expansion of 127. It is not simply a straightforward extension. Although given the current fringe benefit problem that we have, and the Treasury sees, we would prefer to see the entire fringe benefit problem dealt with across the board by Congress in a very evenhanded fashion which might take some of the pressure off particular programs, such as the educational assistance program.

Senator PACKWOOD. I would be willing to do that. I would exempt all fringe benefits from taxable income.

Mr. McKEE. Well, I think, Senator, we would all want to sit down and take a long, careful look at the revenue consequences and the equity consequences of exempting all fringe benefits from taxation. I think we might find that we would all prefer to include them all in the tax base and have lower tax rates, but that is a debate for a different day, I suspect.

Senator PACKWOOD. It is a much bigger debate than this issue. I would argue it has helped benefits. The union, the employer, and the nonunion business are more likely to tailor their educational and health plans to the mutual wishes of their employees and the business at a cheaper price than the Federal Government could do trying to fulfill the same responsibilities.

Mr. McKEE. You may be correct, Senator, but I would say that it is still disturbing that the only people that can benefit from section 127 are people that happen to be employees of employers that happen to have section 127 plans. Our real concern is that we ought to have education of certain types, of a certain type of quality, funded, or paid for with pretax dollars, and we should address that problem directly.

Senator PACKWOOD. Under that argument you could say that the only people that benefit from health insurance plans are those who happen to work for an employer that has health insurance.

Mr. McKEE. Well, on the other side, as you know, we do have rules allowing the deductibility of certain medical costs for an individual who doesn't happen to benefit from one of those plans. We have no corresponding rule that provides any similar equitable treatment for someone that doesn't happen to fit within an employer educational benefit plan.

Senator PACKWOOD. If that would nullify Treasury opposition I would be happy to draft such a bill for educational benefits.

Mr. McKEE. I think that would certainly address our concern of lack of equity among taxpayers. I think that kind of broader bill is beyond the scope of today's inquiry, but we would be happy to work with you to explore it. I think that would really involve the questions of revenue costs and this administration's approach to the educational situation. As you know, we have tuition tax credits, and we have——

Senator PACKWOOD. As you say, if you get that kind of a deduction it's very similar to tuition tax credits, then.

Mr. McKEE. I would expect the response of the administration would be that we have tried to deal with this problem in two other ways, through the credits and through educational savings accounts. But we are certainly willing to work with you and others to try to develop other alternatives.

Senator PACKWOOD. Mr. McKee, thank you. I have no further questions.

Mr. McKEE. Thank you.

Senator PACKWOOD. I would like to place in the record at this time a great variety of letters from a great many organizations—unions, businesses, nonprofit organizations—supporting S. 249. To date, we have received no letters in opposition, except from the Treasury Department.

[The letters follow:]

AMERICAN RETAIL FEDERATION
1616 H STREET N.W. WASHINGTON, D.C. 20006 (202) 783-7971

DONALD F. WHITE
VICE PRESIDENT

April 27, 1983

The Honorable Bob Packwood
Chairman
Subcommittee on Taxation and
Debt Management
Committee on Finance
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The American Retail Federation urges early action on the Employee Educational Assistance Act (S. 249), now before your subcommittee.

ARF, a federation of 50 state and 32 national retail associations, believes that your measure is important to the quality of employees in this highly labor-intensive industry. Allowing employees to deduct the costs of training and education courses for upgrading skills and learning new job responsibilities--the central core of the Packwood-Benson bill--is essential to the continuation of these important programs.

The American Society for Training and Development already has set forth a comprehensive and compelling case for this legislation. Rather than repeat the substance of their case, we would like to emphasize our full and enthusiastic support thereof.

Thank you for your help in promoting human resource and development for retailing's workforce.

Sincerely,

D. F. White

Donald F. White

NAM
National Association
of Manufacturers

RANDOLPH M. HALE
Vice President and Manager
Industrial Relations Department

April 28, 1983

The Honorable Bob Packwood
SR-259
Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Packwood:

The National Association of Manufacturers is pleased to submit this statement in support of S. 249, the Employee Educational Assistance Extension Act, introduced by you and other sponsors on January 27, 1983.

The National Association of Manufacturers (NAM) is a voluntary business organization which represents more than 12,500 member companies, eighty percent of which are considered small or medium-sized businesses. NAM members produce nearly 75 percent of the nation's manufactured goods and employ approximately 85 percent of all workers employed in manufacturing. The NAM is also affiliated with an additional 158,000 businesses through its Associations Department and the National Industrial Council.

S. 249 essentially makes permanent Section 127 of the Internal Revenue Code which was enacted as part of the Revenue Act of 1978 (P.L. 95-600) and is due to expire under sunset provisions on December 31, 1983. Section 127 provides that virtually all forms of employer provided education (including training) of employees does not constitute taxable income attributable to participating employees. Prior to the enactment of Section 127, the value of such education was considered taxable income of the employee, and thus subject to withholding taxes, unless the education related directly to the performance of the employee's present job responsibilities. In other words, if the education or training prepared the employee for a different job, the employee was required to pay taxes on the value of that training or education.

The difficulties businesses which engage in employee educational programs would encounter after 1983 should Section 127 not be extended are numerous. The result would be an administrative nightmare. Employers would be required to determine if educational subsidies provided to employees were related to the current job responsibilities of the employee recipient, and, if not so related, withhold an appropriate amount of additional taxes from the employees paycheck based on the amount of the subsidies provided. As can be imagined, the question of whether education is job related or not is not always easily answered. The required determination would, therefore, place significant demands on employer personnel resources and subject employers, who in good faith did not withhold employee taxes, to substantial monetary liabilities should an IRS agent subsequently disagree with the employer's judgement. Further, the IRS could conceivably attempt to evaluate and tax even in-house training should it determine that the training was not job related for any particular employee.

The merits of extending Section 127 are, however, even more far reaching. It is now well recognized that the nation's economy is undergoing extensive structural changes which will render the skills of many employees obsolete and which will create new jobs which employers will be unable to fill because of a lack of qualified candidates. The Job Training Partnership Act, which NAM supported, was enacted in the hope that this mismatch between worker skills and employer needs could be remedied through education and training. Reauthorization of Section 127 would be another step in meeting this goal.

Should Section 127 be allowed to expire, employers will be deterred from offering upgrading educational courses to their employees because of the inherent administrative difficulties already discussed. More importantly, employees themselves will be discouraged from taking such courses because their compensation will be subject to greater withholding. Typically, the employee in need of skills or qualification upgrading will be the least able to sustain the resultant loss in pay. Hence, employer efforts to retrain employees for the jobs of the future would be seriously hampered. In a time when this country has a critical need to improve the quality of its workforce, this result hardly seems appropriate.

The Joint Committee on Taxation has estimated that passage of S. 249 could result in a loss of approximately $40 million a year in taxes. In view of the importance to economic recovery of reducing the deficit, this loss cannot be considered lightly. However, it is believed that in the long run whatever revenues may be lost through exempting employer subsidized education for employees from taxation will be more than compensated for by the tax benefits that can be realized from an employed, educated labor force trained in the skills necessary to fill the jobs of the future.

In closing, NAM would like to thank you for this opportunity to contribute to your deliberations on this important issue. Should you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

Randolph M. Hale
Vice President, Industrial Relations
NAM

RMH/cc

AT&T

William S. Cashel, Jr.
Vice Chairman of the Board

American Telephone and
Telegraph Company
195 Broadway
New York, N.Y. 10007
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April 19, 1983

The Honorable Bob Packwood
Chairman, Subcommittee on
Taxation and Debt Management
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We support S.249, the "Employee Educational Assistance Act", which you recently introduced in the Senate. There is no doubt that the present act which excludes employer tuition aid payments from employee income tax has provided the incentive for a greater number of our people to upgrade their education and skill level by participating in external education and training programs.

We also feel that the present act has had a direct bearing on promotional opportunities for non-management people, women and minorities. For example, one of our companies of about 40,000 employees estimates that 85% of non-management people receiving degrees through tuition assistance moved into management positions over time. Another smaller company (10,000) reported that they can identify females and minorities being promoted both to and within management as the result of tuition aid.

Again, we support this important piece of legislation which has been beneficial to us and our employees.

Very truly yours,

CATERPILLAR TRACTOR CO.

[illegible] K Street, N.W.
Washington, D.C. [illegible]
Telephone [illegible]

March 23, 1983

Honorable Robert Packwood
United States Senate
Room 173, RSOB
Washington, D.C. 20510

Dear Senator Packwood:

This is a note to let you know that Caterpillar Tractor Co. appreciates your sponsorship of S. 249. This bill makes the tax-free treatment of employee educational assistance a permanent feature of the IRS code.

Caterpillar believes in the encouragement of continuing education and actively joins you in support of S. 249.

Sincerely,

Hope Flammer

Hope Flammer

Governmental Affairs

HF:bll

CATERPILLAR SUPPORT FOR S. 249 (Packwood)

The Employee Educational Assistance Extension Act

Caterpillar Tractor Co. enthusiastically supports S. 249. This bill, introduced by Senator Packwood, makes the tax-exempt status of employee educational assistance a permanent provision of the IRS code.

BACKGROUND

Before 1978, an employee often had to pay federal income taxes on tuition reimbursement received from his employer. A course of study had to be directly related to an employee's current job to qualify under the IRS code as a form of tax-free income. Because of this stipulation, secretaries, clerical workers and individuals in entry level jobs were especially limited to a narrow range of educational programs. In 1978, Senator Packwood introduced provisions that made reimbursement for education related to future jobs tax-free. These provisions are due to expire at the end of 1983.

REASONS FOR SUPPORT

* Educational assistance is not a "fringe benefit." It is, rather, an opportunity for self-improvement and job mobility. Tax-free tuition reimbursement encourages workers to learn skills that will both improve present work performance and prepare individuals for future job opportunities. Because of the growing complexity of industrial operations, continuing education is needed today, perhaps more than ever before.

* Caterpillar employee participation in educational assistance programs has increased by 50 percent since enactment of the 1978 legislation. Tax-exempt tuition reimbursement has a demonstrated effect on the degree to which workers take advantage of educational opportunities.

* Because Caterpillar's operations are labor intensive, employee educational assistance touches the lives of a large number of people across the country. During the 1981-1982 school year alone, 2,478 Caterpillar employees were reimbursed for over $300,000 worth of tuition costs. This investment in human talent and productivity should be encouraged.

Hope Flammer
202/466-5090
Caterpillar Tractor Co.

National Organization for Women, Inc.
425 13th Street, N.W. Suite 1048 Washington, D.C. 20004 • (202) 347-2279

March 22, 1983

Honorable Bob Packwood
273 Russell Building
U.S. Senate
Washington, D.C. 20510

Dear Senator Packwood:

NOW strongly supports S. 249, the Employer Educational Assistance Act of 1983, and we commend your sponsorship.

This bill makes permanent the tax rules enacted in 1978 that make employer-provided educational assistance tax free to employees. It encourages the low-skilled to take advantage of education and training programs that will prepare them for new jobs and responsibilities and allow them to move up the economic ladder. To tax employees for employer-sponsored training that will improve the employees' economic well-being would contradict America's dedication to economic mobility.

We urge the speedy passage of this important Act.

Sincerely,

Judy Goldsmith

Judy Goldsmith
President

MARTIN MARIETTA CORPORATION

C K BIGELOW
DIRECTOR WASHINGTON RELATIONS

1800 K STREET, N.W., SUITE 1000
WASHINGTON, D.C. 20006
TELEPHONE (301) 897-6164

April 4, 1983

The Honorable Bob Packwood
United States Senate
Washington, D.C. 20510

Dear Bob:

As you know, Martin Marietta encourages the professional development of its employees by helping them attain the education they need to qualify for more responsible assignments.

We, therefore, endorse S249, the Employee Educational Assistance Extension Act which you introduced on January 27.

I will continue to actively follow this legislation with interest. If I can be of additional help, let me know.

Sincerely,

EXECUTIVE OFFICES · 9300 LIVINGSTON ROAD · FT. WASHINGTON, MD 20744 · TELEPHONE AREA CODE 301-248-6200

NATIONAL TOOLING & MACHINING ASSOCIATION

WILLIAM E. HARDMAN
Executive Vice President

April 5, 1983

The Honorable Bob Packwood
United States Senate
Washington, DC 20510

Dear Senator Packwood:

On behalf of the 3,700 members of the National Tooling & Machining Association, I am writing to express our support for the Employee Educational Assistance Extension Act, S. 249.

Our members employ people with a high level of skills, mostly people who are in or have completed a four-year apprenticeship program. Our industry faces a chronic shortage of skilled labor. For this reason, the majority of our members will pay their employee's training costs, whether they be internal expenses, tuition at community colleges, and/or tuition at vocational education schools. The training the employees receive at these schools may be a portion of their apprenticeship program or it may be retraining journeymen for new skills required by our country's expanding technology. In either situation, the training is necessary in order to insure a sufficiently large labor pool.

Were this bill not to pass, forcing employers to again withhold a portion of their employees salary as a tax on training benefits, the current skills shortage our industry faces would be exacerbated. Employees would be less willing to take these courses if they were taxed on the benefits with the money coming out of their paychecks. This would create a special problem for those employers who need to retrain their employees due to new technology.

Our industry is currently undergoing expansion which in turn will create a demand for even more

The Honorable Bob Packwood
April 5, 1983
Page Two

training and retraining. Without your legislation, shortages of skilled labor could easily slow the coming economic recovery.

Thank you for your introduction of the Employee Educational Assistance Extension Act. Please be assured that we are joining you in seeking its passage.

Sincerely yours,

WE Hardman

William E. Hardman
Executive Vice President

WEH:rgj

Johnson & Johnson

NEW BRUNSWICK, N. J. 08903

April 22, 1983

Honorable Robert Packwood
173 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Packwood:

On behalf of the Johnson & Johnson Family of Companies, I would like to express our support for the Employee Educational Assistance Extension Act (S.249) to extend permanently some education provisions of the Revenue Act of 1978. To allow these provisions to expire on December 31 would not only deter the vital job-training efforts necessary to meet the challenges of a productive economy, but would jeopardize the existing EEO and Affirmative Action guidelines for upgrading skills and promoting employees within our workforce. The adverse impact on the opportunities for upward mobility for women and minorities is particularly disturbing.

Failure to extend education assistance provisions could also impose unexpected and substantial tax liabilities on employers and employees and again subject them to the accidents of geography where in earlier years we found differing interpretations on tax liability promulgated in different IRS regions.

We support the passage of this legislation.

Very truly yours,

John S. Brown
Vice President Corporate Staff

jar

ARC INTERNATIONAL LTD.
"Ideas that lead to greater awareness, responsibility and communication"

ROBERT WHITE
President

April 13, 1983

The Hon Bob Packwood
US Senate Office Bldg
Washington, DC 20510
U. S. A.

Dear Senator Packwood:

Originals of the attached letter were sent to all Republican Senators this date and I wanted to let you know.

I also wanted to thank you for your personal support of this bill. While it does not affect me personally becuase of my business being in Japan, I am convinced it deserves our support in order to keep the United States competitive.

I assure you that all expenses relating to education in Japan are tax deductible and not taxable to employees.

I would like to thank you in advance for anything that you can do to support the efforts of the American Society for Training and Development and Instructional Systems Association to have your bill become law.

Best regards,

Robert White

Encl.

NO 32 KOWA BLDG 3F 5 2 32 MINAMI AZABU MINATO KU TOKYO 106 ☎ 03 444 1041 CABLE ARCINTERCO TELEX ARCINTER J28959

ARC INTERNATIONAL LTD.
"Ideas that lead to greater awareness, responsibility and communication"

ROBERT WHITE
President

April 13, 1983

The Hon Bob Packwood
US Senate Office Bldg
Washington, DC 20510
U.S.A.

Dear Senator Packwood:

I am an American entrepreneur doing business in Japan, a Republican Eagle and Chairman of Republicans Abroad - Japan.

I would like you to consider being a co-sponsor of Senate Bill 249 - Employee Educational Assistance Extension Act. I firmly believe that a major challenge facing all United States citizens and organizations will be to adapt to the incredible pace of change in our society. This requires training and institutions cannot handle the burden. American companies have shown a willingness to invest in training their staff to handle new job responsibilities and the personal/business problems created by this accelerating rate of change.

No employee is going to be willing to invest his time in training if there is any fear of his being taxed on the value of that training.

Senator Packwood's bill gives clear and simple guidance to the IRS and will result in an opportunity for US companies to support our efforts to remain competitive in international trade. I strongly urge you to consider co-sponsoring Senate Bill 249.

Thank you for any assistance and thank you for the continuing contribution you are making through your service in the Senate.

Sincerely,

RW

[illegible] KOWA BLDG. 9F 5-2-32 MINAMI AZABU MINATO-KU TOKYO 106 ☎ 03 444 1241 CABLE ARCINTERCO TELEX ARCINTER J28959

Hudson-Thompson, Inc.
A Subsidiary of S. M. Flickinger Co., Inc.

A World of Service to the Food Industry
2720 U.S. Highway 80 West
P.O. Drawer Q, Montgomery, AL 36196-1801
Phone (205) 288-6250

1983 APR 19 AM 10: 25

April 8, 1983

The Honorable Bob Packwood
United States Senate
Washington, D. C. 20510

Dear Senator Packwood:

Thank you for your cosponsorship of S.249, the Employee Educational Assistance Extension Act. Please count me among the supporters of this legislation.

With the rapidly changing job content and need for different kinds of skills by employees, it is imperative that we do not create any barriers to additional education and training. The incentive to keep training and employees must not be removed as I fear the expiration of the 1978 tax rule would do.

If there is any way I can help get this legislation passed, please share that with me.

Sincerely,

James E. Peterson

James E. Peterson
Training Director

JEP/dg

Wayne H. Smithey
Vice President-Washington Affairs
Governmental Relations

Ford Motor Company
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

April 20, 1983

The Honorable Bob Packwood
United States Senate
145 Russell Senate Office Building
Washington, D. C. 20510

Dear Senator Packwood:

We are pleased to see your active sponsorship of the Employe Educational Assistance Extension Act (S. 249) recently introduced in the Senate.

The Ford Motor Company, through its tuition aid plans for hourly and salaried employes, has enabled a substantial number of individuals to benefit from advanced educational experiences.

Personal development through these programs is serving as a genuine catalyst to increase individual competence in a society dominated by rapidly changing technology. The commitment and dedication required to improve employe skills will certainly be enhanced by the financial implications inherent in the proposed legislation.

On behalf of the Ford Motor Company and its 155,900 employes throughout the United States, I want to express my support for Senate bill S. 249.

Regards,

WFL:dvh

McGraw-Hill, Inc.

1750 K Street N.W. Suite 1170
Washington D.C. 20006
Telephone 202/463-1730

William P. Giglio
Vice President
Washington Affairs

April 21, 1983

The Honorable Bob Packwood
United States Senate
295 Russell Building
Washington,D.C. 20510

Dear Senator Packwood:

This letter is written in support of S. 249 which would extend permanently some education provisions of the Revenue Act of 1978. The proposed legislation, by removing the ambiguity and the lack of standardized administration which existed before 1978, will be beneficial in helping lower-payed employees to upgrade their skills for advancement. We urge passage of S. 249.

Sincerely,

WPG/dmk

Willamette
UNIVERSITY
Office of External Education
900 State Street
Salem, Oregon 97301
Phone: (503) 370-6162

April 21, 1983

Senator Robert Packwood
1317 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Packwood:

I am writing simply to express my strong support for S.249, the Employee Educational Assistance Act, and to thank you for introducing it into the Senate. At a time of high unemployment and significant change in the structure of our economy, it clearly makes no sense to tax people for undertaking training to expand their job skills.

Sincerely yours,

Gene S. Leonardson, Ph.D.
Director

GENERAL DYNAMICS CORPORATION
Washington Operations
1745 Jefferson Davis Highway
Arlington, Virginia 22202

Edward J. LeFevre
Corporate Vice President

703-553-1200

April 27, 1983

Honorable Robert Packwood
United States Senate
Washington, DC 20510

Dear Senator Packwood:

I am writing to you to express the strong support of General Dynamics Corporation for your Bill S.249, The Employee Educational Assistance Act.

General Dynamics has long considered employee education and training programs as fundamental to doing business, and expends approximately $20M annually in support of these programs for our 85,000 employees. Education and training is a critical work force function that is an absolute necessity to meet the rapidly changing and advancing technology of the modern world today. It is the only viable means to maintain a highly motivated and productive work force.

It would be a great step backwards to allow the exclusion of the value of employer-provided education and training from personal income to expire. The current law providing this exclusion expires in December 1983, and a permanent extension as proposed in S.249 is urgently required. We applaud you for your foresight and wisdom in introducing this important piece of legislation, and urge speedy approval by the Congress.

Thank you for your support in this very important matter.

Sincerely,

E. J. LeFevre

THE BOEING COMPANY

P. O. Box 3707
Seattle, Washington 98124

April 21, 1983

Mr. John Colvin, Legislative
  Director - Staff
Senator Robert Packwood
145 Russell Building
Washington, D. C. 20510

Dear Mr. Colvin:

The Boeing Company strongly commends Senate Bill 249 for favorable consideration.

Our perspective has been consistent over the years concerning the issue of tax exemption for employees receiving reimbursement for training and education offered by a company. While our tuition reimbursement programs also serve company interests, they provide for the individual employee opportunities of self-development, improved competitiveness in the labor market and career enhancement.

Providing income tax exemption only for reimbursement as it directly relates to an individual's current job, which could happen if this legislation does not pass, is a deterrent to those taking advantage of such opportunities. Among those deterred are those who could assist in meeting the increasing demand of jobs in our high-technology industries as well as women and members of ethnic minority groups, for whom such educational opportunities could otherwise provide an important assist in their efforts to achieve upward mobility.

We thank you and the committee for giving this matter serious and hopefully, favorable consideration.

Sincerely,

Carver C. Gayton

Carver C. Gayton
Manager
Educational Relations
and Training

Emergency Committee for American Trade 1211 Connecticut Ave Washington DC 20036 (202) 659-5147

April 26, 1983

The Honorable Bob Packwood
United States Senate
Washington, D.C. 20510

Dear Senator Packwood:

I commend you for introducing the Educational Assistance Extension Act, S.249. We in the Emergency Committee for American Trade are particularly interested in the provision of the bill providing that the educational assistance benefits provided to spouses or family members of employees will be tax-free. This provision presumably would be available for foreign language training for employees and their families, thereby opening up possibilities for employment overseas. ECAT has long supported legislative and other provisions designed for this purpose. We are particularly appreciative that you have included such a provision in S.249.

As you know, the members of ECAT are the leaders of 63 U.S. firms with substantial overseas business interests. In 1981, ECAT member companies had total worldwide sales of approximately $700 billion. In the same year, they had five million employees worldwide. Our members thus have a very great interest in foreign language training. We believe that S.249 will facilitate language training to the advantage of both employees and their employers.

Sincerely,

Robert L. McNeill

Robert L. McNeill
Executive Vice Chairman

Mobil Oil Corporation

150 EAST 42ND STREET
NEW YORK, NEW YORK 10017

P C KRIST
SENIOR VICE PRESIDENT
EMPLOYEE RELATIONS

April 21, 1983

The Honorable Bob Packwood
United States Senate
Washington, D. C. 20510

Dear Senator Packwood:

In regard to the Employee Educational Assistance Extension Act (S.249), Mobil strongly supports the permanent extension of Section 127 of the Internal Revenue Code.

The reasons for our support are straightforward. In 1981 (the most recent year on which we have data), 3,500 Mobil Oil employees (8.6% of the workforce) used Section 127 to further their work-related educations. They averaged 1.6 courses and $571.00 in tuition refunds ($360.00 per course). The total Mobil tuition refund was $2.0 million (double the 1978 figure). Thus, the tax free treatment provided by Section 127 is apparently playing an important role in educating Mobil's (and, incidentally, the country's) workforce.

We are still considering your proposed changes; namely, the inclusion of educational assistance in cafeteria plans, the coverage of spouses and dependents, and the inclusion of the cost of meals, travel, and lodgings. Our consideration includes placing our highest priority on the vitality and growth of qualified defined contribution and defined benefit plans. In this era in which TEFRA damaged those plans, in which the country faces mounting federal deficits, and in which the OMB has ballooned its fiscal 1984 estimate of the "tax expenditures" represented by qualified benefit plans to $57.0 billion, we are thinking of drawing our covered wagons in a tight circle around our qualified benefit plans.

It would be helpful if John Colvin of your staff could allay our fears.

Sincerely,

P. C. Krist

/pr

cc: Senators Bentsen, Boren, Durenberger,
Moynihan, and Symms

J. J. Calderini
Vice President –
Human Resources

April 20, 1983

The Honorable Robert Packwood
United States Senate
Washington, D.C. 20510

Dear Senator Packwood:

The Clorox Company, which is headquartered in Oakland, California, is a manufacturer and marketer of a wide variety of consumer household products. The company has facilities in 19 states and employs approximately 5,000 persons nationwide. This letter is in support of Senate Bill 249 which extends the Educational Assistance Programs provision of the Revenue Act of 1978 (26 USCS 127) scheduled to sunset at the end of 1983.

The Clorox Company requests your support of new legislation to extend the above provision which excludes all employer educational assistance from employee income tax for the reasons stated below.

First, old laws requiring employers to withhold income tax for educational assistance for, courses taken that did not relate directly to the employee's present job created a disincentive for persons wishing to enhance their careers through additional education. The purpose of these programs is to support employees in furthering their education and their careers. A substantial number of employees using The Clorox Company's plan take courses that are not directly related to their present job, but which could help prepare them for future assignments. For example, The Clorox Company has clerical personnel taking supervisory courses; hourly line personnel taking business courses; etc. Therefore, the old law hurts the majority of persons taking advantage of these types of programs and those they are most designed to help.

Second, a reduction in government spending for educational assistance has inhibited a number of persons from pursuing educational goals. Section 127 of the Internal Revenue Code is a sound private sector approach to helping employees gain secondary and post-secondary education. This approach involves little cost to government and almost no bureaucracy or paperwork. The company-sponsored educational assistance program is an efficient cost-effective method that achieves a valid public purpose.

The Clorox Company General Offices: 1221 Broadway, Oakland, California 94612. Phone (415) 271-7000
Mail Address: P. O. Box 24305, Oakland, California 94623

Finally, in view of the retraining problem faced by American industry, further education is necessary to enable employees to fill new roles and to accept different responsibilities. As new technologies are created, traditional jobs are changing rapidly. Education helps individuals move competently into these new areas. The company remains committed to offering employees the opportunity to advance and to meet these new challenges by furthering their education.

The Clorox Company urges your support of S.B. 249 which extends the Educational Assistance Programs provision of the Revenue Act of 1978. We appreciate the opportunity to comment on this important subject and, if we can be of further assistance, please do not hesitate to contact us.

Sincerely,

J J Calderini

J. J. Calderini
Vice President -
Human Resources

JJC/sam

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

EXECUTIVE DIRECTOR
EDUCATION POLICY & DEVELOPMENT

Ralph Smeda
202/467-6320

April 18, 1983

The Honorable Bob Packwood
United States Senate
259 Senate Hart Office Building
Washington, DC 20510

Dear Senator Packwood:

I strongly support making the S. 249 Employee Educational Assistant Extension Act permanent and encourage you to give it your full support.

I am the National Director of the American Institute of Banking (AIB), a nationwide educational organization which is strongly supported by the banking industry. In fact, banks spend approximately $20 million per year providing tuition aid for 300,000 employees who participate in AIB programs.

The majority of AIB students are entry and junior management employees who most need the new skills and can least afford to pay taxes on these tuition reimbursements.

Therefore, these individuals would be less likely to participate in any type of training that could enhance development of new skills and upward mobility if additional amounts are withheld from already small paychecks to cover the federal tax. This could only serve as a disincentive.

In summary, I would say that at a time when we have critical needs to develop the quality of the workforce and improve national productivity, it is extremely inappropriate to deliberately restrain our most efficient initiative for improving our human capital.

So, again I would like to encourage your full support of S. 249 Employee Educational Assistance Extension Act.

Sincerely,

Ralph Smeda

FARMERS UNION CENTRAL EXCHANGE, INC.
CENEX — Where the customer is the company
Mailing Address: Box 43089, St. Paul, Minn. 55164

April 22, 1983

The Honorable Robert Packwood
United States Senate
Washington, D.C. 20510

Dear Senator Packwood,

I would like to take this opportunity to voice my support of the Employee Educational Assistance Extension Act, S.F. 249.

The taxation of training benefits received by employees would certainly be a disincentive to the programs offered by CENEX as well as other companies and organizations. Current changes in technology and the work force make it essential that training opportunities are available without the burden of taxation. Without proper training the work force will not be able to keep in pace with the rise of technology and the changes in jobs and job skills. Taxation of employees who take advantage of training opportunities is a punitive measure that I believe will hinder the individuals, the organizations and the larger labor force.

I urge Congress to weigh carefully the negative implications of failure of passage for S.F. 249 - Employee Educational Assistance Legislation.

Sincerely,

Julie White

Julie White, Supervisor
Local Co-op Management Training

cc:
Al Baldus
Don Waltz
Dick Siderius

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

DOUGLAS A. FRASER, PRESIDENT
RAY MAJERUS, SECRETARY-TREASURER

VICE-PRESIDENTS

EN BIEBER • DON EPHLIN • MARTIN GERBER • ODESSA KOMER • MARC STEPP • ROBERT WHITE • STEPHEN YOKICH

IN REPLY REFER TO
1757 N STREET, N.W.
WASHINGTON, D.C. 20036
TELEPHONE (202) 828-8500

April 22, 1983

The Honorable Bob Packwood
Chairman, Senate Finance Subcommittee
on Taxation and Debt Management
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

The UAW does not plan to testify on the proposed Employee Educational Assistance Extension Act (S. 249), your bill to make permanent provisions of the Internal Revenue Code excluding employer-provided educational assistance from taxable income. We do, however, support the bill, and we ask that this communication be included in the Finance Subcommittee on Taxation and Debt Management's hearing record.

The UAW has a long history of involvement with employer-paid educational programs. We first negotiated such provisions in the 1964 contracts with the major auto manufacturers. Since then, we have expanded the programs to include other employers of UAW members. Most of these programs are limited to job-related education and associated with career advancement. Although our contracts vary, some include educational assistance of up to $1,000 a year.

The UAW believes such educational assistance programs represent an important vehicle for promoting job retraining and career advancement for workers. The programs enable workers to acquire new skills essential in this age of hi-tech and automation. In addition, the programs play a key role in facilitating career advancement for minorities and women, such as entry into skilled trades jobs.

Prior to 1978, the IRS took the position that employer-provided educational assistance constituted taxable income to employees unless the assistance was directly related to the employee's current job. This narrow interpretation effectively excluded any programs involving job retraining or career advancement. In 1978, Congress took the first step toward correcting this situation, when it amended the Internal Revenue Code to make such educational assistance programs tax free. But this provision will expire in December, 1983. Unless Congress takes action, the law will soon revert to the position adopted by the IRS prior to 1978. This would have a damaging impact on the educational assistance programs currently in place, and would prevent further expansion of such programs.

The legislation (S. 249), which you have introduced, would solve this problem, by making permanent the provisions of the Internal Revenue Code granting tax-free status to employer-provided educational assistance programs. In addition, your bill would allow such programs to include the spouse and dependents of workers. The UAW applauds both of these steps, and hopes that Congress will act speedily to pass the Employee Educational Assistance Extension Act.

Sincerely,

Dick

Dick Warden
Legislative Director

DW:njk
opeiu494

Mountain Bell

931 14th Street, Room 620
P. O. Box 960
Denver, Colorado 80202
Phone (303) 624-9951

Fred G. Wells
Assistant Vice President
Intercompany Contracts

April 27, 1983

The Honorable Robert Packwood
United States Senate
SR-259 Russell Senate Office Building
Washington, D.C. 20510

ATTENTION: Betty Scott-Boom

Dear Senator Packwood:

I am writing as Chairman of the National Issues Committee of the American Society for Training and Development, and as an Assistant Vice President of Mountain Bell concerned with the Training and Education of Mountain Bell employees. This letter is written in support of the proposed Employee Educational Extension Act, S. 249, which bill will continue to exclude employer-provided training and education from employee personal income tax.

Mountain Bell, for example, is a company/employer which is committed to providing educational activities which afford its employees the opportunity for self-development and personal growth. Employee growth is an employer-employee shared responsibility. Responsibility for self-development and personal growth resides with the employee. The company/employer has the responsibility to provide the opportunities and encourage their use. Because employees are viewed as a resource, training and educating our empolyees is viewed as an absolute requirement to meet the challenges of the future for our business.

Briefly, Mountain Bell's Training and Education Assistance Plan (TEAP) provides for 100% reimbursement for tuition, registration, and laboratory fees for approved courses taken at an accredited institution. Reimbursement to part-time employees is limited according to the number of hours worked per week. Courses are required to be related to the employee's present job or a reasonable target job within Mountain Bell. Degree programs must be related to the operations of our Company.

Since employer-provided tuition assistance became tax-free in 1979, participation in the TEAP has risen steadily. In 1978 2,462 people, or 4.9% of the employee body, participated in the Plan; while in 1982, 6,047 people, or 12.4% of all employees, participated. While it is true that revisions to the plan and changes within the communications industry may have played a role in increasing participation, Mountain Bell believes that the tax exempt status of employer-provided assistance has encouraged many employees to use TEAP.

The Honorable Robert Packwood
Page 2
April 27, 1983

The benefits to the Company occurring as a result of employees receiving tuition assistance are equal or exceed the cost of TEAP. Perhaps the greatest benefit to the Company is the professional growth achieved by the employee. A Bell System study conducted during 1975-1976 indicated that non-management employees having four-year college degrees had a promotion rate of 3.4 times that of employees without degrees.

Mountain Bell has found that tuition assistance:

- provides the Company with a qualified pool of candidates for job openings
- increases employee understanding of current technology and allows those in technical fields to keep abreast of technological changes
- increases employee concern and involvement in self-development
- increases employee knowledge and skill on the present job.

Time and time again, employees claim that financial obligations are the primary barrier to pursuing educational opportunities. Tuition assistance will become increasingly important in the efforts to cope with the rapid pace of technological change. Changes in technology will increase the need to retrain workers as their jobs become obsolete.

We strongly promote training and education for an effective work force and urge that S. 249 be adopted by the Senate.

Sincerely yours,

Fred G Wells

Fred G. Wells
Assistant Vice President-
Intercompany Contracts

Copies to: Laird Walker, Robert L. Craig

**American Society for
Healthcare Education
and Training**
of the American
Hospital Association

AHA

840 North Lake Shore Drive
Chicago, Illinois 60611
Telephone 312.280.6137

April 27, 1983

Senator Bob Packwood
SR-259 Russell
Washington, DC 20510

Dear Senator Packwood

On behalf of the board of directors and members of the American Society for Healthcare Education and Training (ASHET), we want to express our support of the Employee Educational Assistance Extension Act (S. 249).

As the national professional association for educators in health care settings, ASHET is keenly aware of the need for training and development among health care employees. Failure to pass S. 249 would have a significant effect on the ability of hospitals and other health care organizations to provide their employees with opportunities for upgrading skills and learning new job responsibilities.

Because substantial tax liabilities to employers would occur if S. 249 is not enacted, many health care institutions would be forced to cut back their tuition assistance programs.

Prior to the passage of the Revenue Act of 1978, employers and employees were subject to different interpretations of the tax laws related to educational assistance depending on their geographic location and judgements made by individual IRS agents. This situation caused a great deal of confusion and inequity under the law. A further inequity will be eliminated under S. 249 in that employees in low-level jobs will not be discriminated against. Prior to the Revenue Act of 1978, regulations restricted employees to a very narrow range of non-taxable education aid from their employers. Because employees in low-level jobs have a restricted set of duties and responsibilities and more narrowly defined education requirements, these employees were not entitled to the same educational advantages as employees functioning in higher-level positions. Of course, the irony is that the employees most in need of upgrading their skills were not allowed to do so without their and their employers experiencing a negatively reinforcing tax liability.

In addition to expressing our support for S. 249, we would also like to bring to your attention S. 551, a bill designed to exclude from gross income the cancellation of certain student loans. S. 551 was introduced on February 22, 1983, by Senator Roth and is cosponsored by Senators Armstrong, Heinz, and

Moynihan. The provision, which expired on January 1, 1983, was originally enacted as Section 2117 of the Tax Reform Act of 1976 and was subsequently extended by Section 162 of the Revenue Act of 1978. It has been used primarily by public hospitals to recruit and retain health professionals, espeically registered nurses. The key tax issue is that loan forgiveness granted in return for a health professional's prior commitment to work in a given institution becomes taxable income in the year the debt is forgiven. The absence of this provision has a chilling effect on a public entity's ability to attract health professionals by offering them student loans in exchange for a future work commitment. Your support for this bill would be greatly appreciated.

We wanted to let you know of ASHET's strong support for the Employee Educational Assistance Extension Act.

Please do not hesitate to call on us if we can be of further service to you or your staff.

Sincerely

James Metcalf
James E. Metcalf
President

V. Brand
V. Brandon Melton
Director

stp

cc: John Colvin✓
Edmund Rice
Robert Craig

HEWLETT-PACKARD COMPANY
3000 Hanover Street, Palo Alto, California 94304

JOHN A. YOUNG
PRESIDENT AND
CHIEF EXECUTIVE OFFICER

May 3, 1983

The Honorable Robert Packwood
United States Senate
SR 259 Russell Senate Office Building
Washington, D.C. 20511

Dear Senator Packwood:

Hewlett-Packard Company supports S. 249, the Employee Educational Extension Act, which you are cosponsoring. If enacted, S. 249 would modify and make permanent Section 127 of the Internal Revenue Code of 1954 relating to the exclusion of employer-provided educational assistance from an employee's gross income. The provisions of Section 127 of the Code have provided a valuable incentive for a substantial number of Hewlett-Packard employees to further their education, resulting in increased productivity and upward mobility within our organization. Hewlett-Packard therefore supports timely extension of Section 127, which is scheduled to expire on 31 December 1983.

If Section 127 is allowed to expire, employer-provided educational assistance will be included in an employee's gross income. The inclusion in gross income will be a disincentive for many employees to seek further educational opportunities unless an income tax deduction is available to the employee. Such a deduction may not be available, however, since the Internal Revenue Service will probably apply its current job-relatedness restriction on employee deductions from gross income for amounts received under an employer-provided educational assistance program. In other words, only educational courses **directly related** to an employee's **present** position will be deductible by the employee. The aforementioned disincentives will have the greatest impact on employees in low-level jobs, since most courses taken by such employees (almost always on personal time) are aimed at obtaining future positions.

S. 249 also provides for additional amendments to the present Section 127. In particular, the bill extends the exclusion from gross income to educational assistance provided to spouses or family members of the employee. While Hewlett-Packard will not oppose S. 249 because of the inclusion of this amendment, we feel that it conflicts with the stated purpose of Section 127 and may lead to abuse by owner-employees. If educational incentives for the general public are needed, such incentives should be addressed separately.

If we can answer any questions you might have, please do not hesitate to contact us.

Respectfully,

John Young
President

National Association of State and Territorial Apprenticeship Directors

18 Reddy Lane
Loudonville, N.Y. 12211

April 27, 1983

Hon. Robert Packwood
United States Senate
Washington, D. C.

Dear Senator Packwood:

This Association wholeheartedly supports your bill, S. 249, which would make permanent the tax rules enacted in 1978 which are applicable to employees who receive educational assistance from their employers. Apprentice Training is a major national training effort in that category, and we want to be sure that apprentices are not taxed for the cost of their training.

The benefits of apprenticeship to the nation, and its citizens, are substantial. Well-trained skilled workers who come through the apprenticeship system enhance our country's competitive position in world commerce, improve our defense posture, and contribute their time and skill to the training of future generations. These workers should not be required to pay taxes on the cost of training they receive.

Please let me know how we can help you to make the 1978 provision permanent. I'm asking all Association Members to advise their representatives in Congress of the need to support your proposal.

Sincerely,

Donald J. Grabowski

Donald J. Grabowski
President, NASTAD

DJG:CS

UNION CARBIDE CORPORATION 1100 FIFTEENTH STREET, N.W., WASHINGTON, DC 20005
FEDERAL GOVERNMENT RELATIONS
PHONE: (202) 872-8555

JAMES C. ROWLAND, JR
VICE PRESIDENT

April 26, 1983

The Honorable
Bob Packwood
United States Senate
Washington, D.C. 20510

Re: S. 249, Employees
Educational Assistance
Extension Act

Dear Senator Packwood:

Despite our general reluctance to support measures which would impair the revenues of the Treasury, we support the enactment of S. 249, the Employees Educational Assistance Extension Act. As you know, the bill would make permanent tax rules applicable to employees who receive educational assistance from their employers.

Union Carbide has successfully offered such assistance to its employees in a program that is popular and well received. We believe the progam is beneficial to our employees, to the corporation and to the nation as a whole. Most of the employees who make use of our program do so to complete their college education, and a significant percentage of them are minority employees. The program, of course, contains safeguards which are adequate to prevent its use for frivolous courses.

We hope the Congress will act promptly to prevent this useful program from expiring on December 31, 1983, as now scheduled, and we appreciate your interest in this subject.

Sincerely,

J C Rowland Jr.

/jr/#2250A

PETER A. LAND ASSOCIATES
ORGANIZATIONAL AND HUMAN
RESOURCE DEVELOPMENT

April 25, 1983

The Honorable Bob Packwood
United States Senate
Washington, D.C. 20510

Dear Senator Packwood,

Just a note to voice my strong support for your efforts with the Employee Educational Assistance Extension Act. You obviously sense that full economic recovery is tied to productivity and productivity is rooted in the technical and managerial skills of our workforce.

I'll write supportive letters to my legislators and encourage others to do likewise.

Sincerely,

Peter A. Land
PETER A. LAND
President

331 HOLLY RIDGE DRIVE // MONTGOMERY, ALABAMA 36109 // (205) 271-2639

Sears
Merchandise Group

National Headquarters
SEARS TOWER
CHICAGO, ILLINOIS 60684
312-875-5707

CON S. MASSEY
Vice President
Personnel & Employee Relations

April 26, 1983

The Honorable Robert Packwood
United States Senate
Senate Office Building
Washington, D.C. 20510

Dear Senator Packwood:

Sears supports the passage of Senate Bill 249, the Employee Educational Assistance Extension Act.

Your sponsorship of this Bill is appreciated by the business community. Passage of this Bill will clarify the IRS rulings which, prior to 1978, were so ambiguous.

As the need for employee education and training grows, the need for this legislation will become even greater. Federal requirements that employees pay income tax on the value of employer provided education and training would constitute an increasingly serious disincentive to the development of employees, companies, and the national economy.

Very truly yours,

Con Massey

A SEARS, ROEBUCK COMPANY

OWENS/CORNING
FIBERGLAS

OWENS-CORNING FIBERGLAS CORPORATION TECHNICAL CENTER GRANVILLE, OHIO 43023

March 18, 1983

The Honorable Howard M. Metzenbaum
347 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

As a manager of industrial education, I am asking for your support of S.249, the Employee Educational Assistance Extension Act, which was introduced on January 27 by Senator Bob Packwood of Oregon.

Our facility consists of over 1000 research and support personnel who must remain technically sagacious if our business and other American businesses are to survive. Strong evidence exists for linking economic growth with the creation of new knowledge and the transfer of technology into the production of goods and services. Knowledge creates new products and services, improved production techniques, and better management and organizational strategies. This link between education, training and economic growth is becoming more critical because of shifts in the economy toward the service and information sectors.

The rate at which automation can be introduced and the contribution it makes to the growth of productivity will partly depend on industry's ability to retrain workers for new jobs, either within the same industry or in a new industry.

Industries' demands upon educational institutions can expedite changes comparable to that of foreign systems and help ensure the supply of this talent and, thus, competitiveness in world markets. There is a severe shortage of engineers, computer experts and information specialists needed to support the growth of information technology for use in industrial environment.

The principle goals underlying Federal involvement in education have historically been: 1) to contribute toward national economic well-being, 2) to ensure national security, and 3) to provide an equitable distribution of economic opportunities to U.S. citizens. While greater access to education and training cannot directly create new jobs and may not increase overall wage levels, there is a strong correlation between workers' educational levels and their employability.

PAGE 2
March 18, 1983

Your support for the continuance of the provisions in the Employer Educational Assistance Extension Act will help ensure the future vitality and competitiveness of U.S. industry in a world characterized by rapid technological change and growing complexity.

Sincerely,

Andrea Jones
Andrea Jones, Supervisor
Human Resource Development
OWENS-CORNING FIBERGLAS
Technical Center

cc: David Starr
ASTD National
Cindy Leland, National Affairs Chair

Northwestern Memorial Hospital

Superior Street and Fairbanks Ct
Chicago, Illinois 60611
312 649-2000

February 8, 1983

American Society for Training and Development
Government Affairs Office
Suite 305, 600 Maryland Avenue, S.W.
Washington, D.C. 20024

To Whom It May Concern:

Northwestern Memorial Hospital offers full-time employees 100% tuition reimbursement for job-related or hospital-related courses taken at accredited colleges or universities. Tuition reimbursement has proved to be a valuable benefit for the Hospital and employees for the following reasons:

1. Recruitment - Northwestern Memorial Hospital is a progressive teaching hospital that needs to attract high quality professionals. Candidates for positions find the tuition reimbursement policy attractive because of the need to keep current with the constant technological changes in health care and as a means to prepare themselves for the promotional opportunities available in a tertiary care center.

2. Retention - Northwestern Memorial Hospital is seriously committed to retaining quality personnel through training and development. Tuition reimbursement coupled with work experience, inhouse training programs, and in-service education gives employees the tools necessary to meet their individual personal and professional goals as well as the Hospital's.

   Difficult-to-recruit technical positions are often filled by NMH employees who have utilized the tuition reimbursement program.

   EXAMPLE: NMH was having a difficult time recruitimg data processing programmers in 1981. As a result, a Programmer Trainee Course was offered to Hospital employees who had completed at least 2 data processing courses. The response from employees was extremely enthusiastic, with at least 30 employees from

Member of The Northwestern Memorial Group
Member of The McGaw Medical Center of Northwestern University

non-data processing departments meeting the minimum qualifications. The employees who participated in the program had a minimum of three years service at the Hospital and were promoted from lower level positions. These employees were able to qualify for the program because the tuition benefit allowed them to take the necessary pre-requisite data processing courses.

The Hospital was able to retain and reward good employees through the Programmer Trainee Course while also saving the Hospital costly recruitment fees.

3. Participation- When the tuition reimbursement program was implemented in 1975, utilization of the benefit was primarily by employees in professional positions. Currently 48% of the employees using tuition-reimbursement are in lower level technical, clerical, and service positions. If employees have to assume the burden of paying income tax on tuition benefits the number of employees in lower level positions who could afford the additional tax liability would be greatly reduced. It is unlikely that an environmental service worker with an average annual income of $13,500 could assume the additional tax liability of expensive tuition costs.

4. Affirmative Action - If employees have to pay income tax on the value of employer-paid-for education not directly related to the employee's job it may negatively impact on women and minorities. Of the 48% of lower level employees at NMH receiving tuition reimbursement, few are taking courses directly related to their jobs. The female secretary or black food service worker pursues schooling as a way to move out of their current positions. The tax on tuition and as a "personal" expense would be particularly punitive to the employees who have the greatest need.

Summary

We, at NMH strongly urge the Congress to extend the Employer Educational Assistance provisions of the Revenue Act of 1978. Employee upward mobility and higher earnings as a result of acquiring new skills and knowledge will provide a larger income tax base and increased revenue to the Internal Revenue Service. In addition, employees will be encouraged to take advantage of opportunities for self-improvement.

Sincerely,

Patricia E Tures

Patricia Tures
Assistant Director
Human Resource Services

PT:kw

Blue Shield
Ohio Medical Indemnity Mutual Corp. 6740 North High Street/Worthington, Ohio 43085 (614) 846-4990

March 25, 1983

The Honorable Howard M. Metzenbaum
347 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Metzenbaum:

The employer educational assistance provisions (Section 127) of the Revenue Act of 1978 will expire in December of 1983. If this provision expires, our employees will have to pay income tax on any educational assistance they receive from the corporation unless it relates directly to their present job. According to the IRS regulations, manager level jobs could be more directly related to a much broader range of educational opportunities than could skilled, technical or professional level jobs.

During 1982, Ohio Medical Indemnity Mutual Corporation paid approximately $40,000 to employees for educational assistance. Seventy-seven percent of this total went to non-management employees. Forty-one percent of our current workforce is promoted internally. While it is difficult to directly relate tuition reimbursement to this promotion figure, many of the employees who take advantage of educational assistance are promoted. The corporation receives direct benefit from this educational assistance program through a more productive and motivated workforce.

Senator Robert Packwood is slated to introduce a new bill early in 1983 which will renew Section 127 of the Revenue Act of 1978. Please encourage Senator Danforth to consider cosponsoring this extension bill.

At a time when Ohio is facing financial crisis; lost revenues from closing industries; increased unemployment and increased taxes, we cannot afford to ignore a bill which benefits both industry and human resources.

Sincerely,

Cathleen M. O'Toole

Cathleen M. O'Toole
Administrator,
Tuition Reimbursement Program

CO/km

cc: David Starr, Aide
Richard Ayish
Cindy Leland
Dorothy Walsh

National University Continuing Education Association

One Dupont Circle, Suite 360
Washington, DC 20036
(202) 659-3130

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April 29, 1983

Office of the Executive Directo

Governmental Relations Committee
Thomas M. Hatfield, Chair
Dean of Continuing Education
The University of Texas at Austin
Main Building 2502
Austin, Texas 78712

Dear Tom:

In Reno we discussed the fact that NUCEA should support S. 249, the Employee Educational Assistance Extension Act. This is legislation which prevents the government from taxing employer educational assistance that is not strictly job-related. NUCEA worked with the American Society for Training and Development in getting this legislation included in the Revenue Act of 1978 which expires at the end of this year.

Enclosed is a statement from the American Council on Education which we have endorsed and testimony explaining the issue presented by the American Association of Community and Junior Colleges.

We are also encouraging all people interested in this legislation to encourage their senators to co-sponsor S. 249, which was introduced by Senator Packwood of Oregon.

Sincerely,

Carol

Carol M. Katzki
Associate Director

Attachments

cc:			
	Adelle Robertson	Dennis Dahl	Phyllis Jonas
	Bob Craig, ASTD	John Duffy	Laverne Lindsay
	Dwight Marshall	Glen Fahs	Morris Keeton
	Edward Anderson	Don Fancher	Gail McLure
	Bob Bender	Bill Flowers	Harold Miller
	Gene Bramlett	Virgil Gehring	Robert Scannell
	Bill Bryan	Keith Glancy	Gene Tinnon
	Ed Crispin	Ellen Kaye	

nucea

1983 Annual Conference
April 3-7, Reno, Nevada

Hannaford®

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34 Hannaford Street
So. Portland, Maine 04106
Tel. 207 767-2111

March 9, 1983

The Honorable Senator George Mitchell
United States Senate
Washington, D.C. 20510

Dear Senator Mitchell:

I am writing to express my deep concern that the 1978 Employee Educational Assistance Act may not be extended before it expires this December. As Manager of Training and Development for Hannaford Bros. Co., Northern New England's largest retail distributor, I witness this legislation benefiting employees daily. From upper management to secretaries and store clerks, we were able to assist over 400 employees attend developmental programs and classes during 1982. These educational programs have helped employees maintain themselves in current positions, upgrade their knowledge to meet the advancing technologies, prepare themselves for higher positions, and receive certificates and degrees from local universities and colleges.

To ensure that our employees can continue to develop their skills, receive personal gratification from educational programs, and improve their performance and productivity levels, I strongly urge you to support the Employee Educational Assistance Extension Act, S.249, which was introduced by Senator Packwood on January 27, 1983. This act would extend the educational assistance provisions permanently, which allows employees to take courses and training without the benefit being taxed as income.

With so much emphasis being placed on trying to curb the declining level of American productivity, it is imperative that S.249 be enacted to enhance productivity. For certainly, without this assistance, we will surely experience a larger regressive effect on American productivity levels.

Let us not be counter-productive!! Again, I strongly urge you to support the Employee Educational Assistance Act, S.249.

Sincerely yours,

Jerome Devlin

Jerome Devlin
Manager-Training & Development

JD/lfr

cc: Tom Gallagher, Legislative Aide

AMERICAN COUNCIL ON EDUCATION
ONE DUPONT CIRCLE
WASHINGTON, D.C. 20036

DIVISION OF GOVERNMENTAL RELATIONS
(202) 833-4736

January 15, 1982

Commissioner of Internal Revenue
Attention: CC:LR:T:EE-178-78
Washington, DC 20224

Dear Sir:

On behalf of the American Council on Education, an organization representing over 1,600 colleges and universities and associations in higher education, and the associations listed below we are pleased to respond to the proposed regulations relating to employers' qualified educational assistance programs published in the November 23, 1981 Federal Register, pages 57325-27.

Section 127 of the Revenue Act of 1978 excludes from an employee's gross income amounts paid or expenses incurred by an employer for educational assistance furnished under a qualified educational assistance program. The proposed regulations fulfill the primary intention of Section 127 of the Act by eliminating the job-relatedness criterion for income tax exclusion; we do, however, have several specific concerns relating to areas covered by the proposed regulations.

1. Employer Educational Assistance as a "Benefit"

We object to the use of the word "benefit" to describe employer educational assistance of all forms. Job education and training are not fringe benefits. The use of the term "benefits" misconstrues the purpose of virtually all employer-provided instruction for employees. Employee education and training are almost always directed to job and career purposes, with only a very few employers paying for non-vocational education for a very small number of employees. We request that the term "benefits," when used to encompass employee educational assistance, be stricken from the final regulations. The term "employee educational assistance" will suffice and eliminate the inaccuracy of the word "benefits."

2. Requirement that Educational Assistance Programs be "Separate Written Plans"

Paragraph 1.127-2(b) requires that the "program of employer educational assistance must be a separate written plan." It is not clear to us what constitutes a "separate written plan," especially in view of our contention that employer-provided educational assistance is not an employee benefit. Therefore, to require that it be kept separate from "other" employee benefits (such as pension, disability, life insurance, medical, and legal services) is an unclear requirement. We therefore request clarification of the term "separate" in the "separate written plan" requirement (paragraph 1.127-2(b)).

3. Alternative Benefits

In the proposed regulations, paragraph 1.127-2(c)(2) appears to prohibit an employee from choosing educational assistance as an alternative to a tax-free employee benefit, such as health insurance. We do not see justification for this restriction in the statute. We therefore request that the IRS remove or clarify paragraph 1.127-2(c)(2) in the final regulations.

We appreciate the opportunity to present our views on these matters and stand ready to discuss them further with your staff.

This letter is sent on behalf of:

American Association of Community and Junior Colleges
American Association of State Colleges and Universities
American Council on Education
Council of Independent Colleges
National Association of Independent Colleges and Universities
National Association of Schools and Colleges of the United Methodist Church
National Association of State Universities and Land-Grant Colleges

Very truly yours,

Sheldon Elliot Steinbach
General Counsel

SES:gfr

The American Society of Mechanical Engineers
2029 K Street, N.W., Washington, D.C. 20006 (202) 785-3756

JACK HOWELL
Director, Federal Government
Relations

April 15, 1983

Honorable Bob Packwood
Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Packwood,

The Senate Finance Committee has scheduled hearings on S.249, the Employee Educational Assistance Act, on April 29th. We will not be testifying so I would like to take this opportunity to advise you that the American Society of Mechanical Engineers was very supportive of the original legislation, S.2388 in 1978, and in my view, events of the intervening years have only added to the need for this legislation to continue.

Every possible incentive to encourage and to promote continuing education for America's work force is an absolute must. We are in the process of advising our 110,000 members about S.249 and encouraging them to speak to their Senator about it.

Sincerely,

Jack Howell

Jack Howell,
Director
Federal Government Relations

JH/rmh
3271A

bcc: Dorothy Walsh

Member • American Association of Engineering Societies • Accreditation Board for Engineering and Technology

THE CONNECTICUT HOSPITAL ASSOCIATIO

DENNIS P. MAY
PRESIDENT

April 5, 1983

Dorothy Walsh
American Society for Training
  and Development, Inc.
Suite 305
600 Maryland Avenue, S.W.
Washington, D. C.   20024

Dear Dorothy,

I would like to take this opportunity to add the support of the Connecticut Hospital Association to the effort to protect the cost of continuing education of employees from unwarranted taxation from the Internal Revenue Service.

The position of the American Hospital Association we believe clearly describes the negative impact on hospital employees and we would certainly support their position.

In an environment which demands that America produce products and services at a level of excellence that meets the expectations of its citizens, quality and competence of our work force has never been more critical. Any situation which deters people from reaching their highest level of excellence especially by complicating their ability to continue their education should be opposed vigorously.

I appreciate the opportunity to respond on this matter.

Sincerely,

Robert D. Bergeron
Vice President, Human Resources

RDB/slg

110 BARNES ROAD ● P.O. BOX 90 ● WALLINGFORD, CONN. 06492-0090 ● TELEPHONE (203) 265-7611

The National Council on Community Services and Continuing Education

NCCE

Anthony M. Cotoia
First Vice President/NCCSCE
North Shore Community College
23 Essex Street
Beverly, MA 01915

April 19, 1983

dent
Lemke
gg Community College
Creek, Michigan

Vice President
ony M. Cotoia
Shore Community College
rly, Massachusetts

nd Vice President
A. Andrews
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ity, Illinois

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e Ireland
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Senator Robert Packwood
c/o Dorothy Walsh
Government and Public Affairs
American Society for Training
and Development, Inc.
Suite 305
600 Maryland Avenue S.W.
Washington, DC 20024

Dear Senator Packwood:

On behalf of the National Council on Community Services and Continuing Education, an affiliate of the American Association of Community and Junior Colleges which represents over 1,200 colleges in the nation, I register my support for Senate Bill 249. I also voice for each of my constituents as President of the National Council on Community Services and Continuing Education, that if this bill is defeated it would seriously jeopardize incentives for those individuals who desire to improve themselves, both educationally and vocationally, the opportunity to succeed in meeting their goals for a better life. To tax an individual who desires to job train in order to meet the needs of the nation is truly an injustice.

Sincerely,

Anthony M. Cotoia
First Vice President

cmb

1120
G Street
Northwest
Washington DC
20005

Area Code 202
628-4600

**International
City
Management
Association**

April 25, 1983

Ms. Dorothy Walsh
Government Affairs Coordinator
American Society for Training and Development
Suite 305
600 Maryland Avenue S.W.
Washington, D.C. 20024

Dear Ms. Walsh:

I am writing to express ICMA's strong support for Senate Bill 249 which permanently extends the educational provisions exempting tuition reimbursements from federal taxes.

As you know, ICMA is a strong supporter of employee training and education and encourages its members to find creative ways to finance educational opportunities for local employees. The need for employee education both to upgrade skills and learn new work methods is becoming more important today as local governments find themselves with increasingly stable work forces. It is imperative that employees see tuition reimbursement plans as an opportunity to grow within the organization and develop both personally and professionally. Including an educational reimbursement as part of an employee's taxable income is a significant disincentive to employee education.

Please feel free to call Christine Becker, our Director of Training, if you need any additional informaton.

Sincerely,

Mark E Kean

Mark E. Keane
Executive Director

SOUTHWESTERN MICHIGAN COLLEGE
CHERRY GROVE ROAD • DOWAGIAC, MICHIGAN 49047

April 25, 1983

Senator Robert Packwood
c/o Dorothy Walsh
Government and Public Affairs
American Society For Training
and Development, Inc.
Suite 305
600 Maryland Avenue, S.W.
Washington, D. C. 20024

Dear Senator Packwood:

Subject: Employee Educational Assistance Act - S. 249

At a time when the nation faces a critical need to enhance the quality of the work force and increase national productivity, Southwestern Michigan College fully supports the initiative of Senate Bill 249 to improve our human resources by stimulating employer investment in work force proficiency.

An increase in the number of women sponsored by employers in Southwestern Michigan College business coursework has been evident over the past three years. The rapid advances in computer technology and applications in the manufacturing field have also contributed to growth in course enrollments in Southwestern Continuing Education programming.

Because of the continually expanding skills required of office and technical employees, this bill is viewed as promoting equality of opportunity for all employees while clarifying the tax status of employer sponsored training. Moreover, the bill stimulates funding of training directly related to actual job requirements in contrast to public job training that must be funded fully and directly by taxpayers.

Your efforts are asked in seeking passage of Senate Bill 249 on the basis of the successful experience of the temporary act.

Sincerely,

David C Briegel

David C. Briegel
President

DCB:mj

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THE AMERICAN BANKERS ASSOCIATION
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ADMINISTRATIVE OFFICER
RAYMOND W. SCOTT

April 21, 1983

The Honorable Daniel P. Moynihan
464 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Moynihan:

S.249 is even more critical to the plight of the American work force today than were its antecedents in the Revenue Act of 1978, which you so wisely sponsored with Senator Javits. And I am reassured that you have joined with Senator Packwood and others in support of S.249 now.

I have been in my present role here in the American Institute of Banking in New York for 17 years. During that time I've seen the New York City banking workforce, particularly at the clerical level, become almost exclusively minority or women. The student population here in employer-subsidized instruction since 1978 reflects that minority/women concentration in the workforce. Many of the approximately 400 class sections we convene here over 3 semesters are almost exclusively minority/women. We have approximately 10,000 enrollments per year. And the overriding impetus for these enrollments from the newly franchised banking group is their striving for upward mobility. All New York City banks provide a generous tuition remission/refund plan. And these large numbers of their employees then utilize their personal hours to pursue a career-related education program.

What a disappointment it would be to those'striving to educate themselves if now S.249 should not succeed! To make tuition refund monies taxable - either to the employer or employee, will surely add a discouragement that will demotivate many inner city bank employees. Inner city colleges and universities will surely suffer a setback too.

You know so well, Senator Moynihan, the role that adult training and education programs must play to make America ever more productive. S.249 addresses that role so importantly. I am confident you will be forthright in your vigorous support of this bill.

Sincerely yours,

FMcMullen

F. A. McMullen
Executive Director

Senator PACKWOOD.

We will move on to a panel of Mr. M. E. Nichols, Mr. Michael Maibach, Mr. Philip Stone, Ms. Barbara Horrell, and Mr. Dale Parnell.

We will start with Mr. Nichols.

STATEMENT OF M. E. NICHOLS, EXECUTIVE VICE PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, WASHINGTON, D.C.

Mr. NICHOLS. Mr. Chairman, members of the committee, thank you for the opportunity to testify in support of S. 249, the Employee Educational Assistance Extension Act.

My name is M. E. Nichols. I am an executive vice president of the Communications Workers of America. We represent some 675,000 workers in telecommunications, cable, TV, public service, data transmission, and other fields. Most of our members are employed by the Bell System and AT&T.

This legislation to extend the present tax-exempt status of employer-paid education and training will have a profound effect on the employment security of our members. It has the important benefit of protecting America's superiority in high technology industries, of aiding skill development for women and minorities, and of eliminating the penalties imposed on nonmanagerial employees under the pre-1978 tax laws.

Senator PACKWOOD. Mr. Nichols let me interrupt just a moment, to say that all of the statements will appear in the record. All of the witnesses will have 5 minutes of oral testimony.

Mr. NICHOLS. Very well, sir.

We have a long-held commitment to providing our members with an opportunity for employment security through training and skill improvement.

One such program, supported by our national training fund—and it will receive credits in May—authorizes establishment of these centers in communities such as Indianapolis, Phoenix, Los Angeles, and Denver. The first of our facilities will open on May 2, just 3 days from today.

We work very carefully and very closely with CWA-represented employers and with our workers to determine their skills and their needs. We try to make certain with the employer that we are supplying the needs, and we try to look to the future to determine what the future will hold and prepare our members accordingly.

Our Indianapolis center, for example, has set up courses in areas such as computer literacy, computer technology for both users and technicians, computer programing, marketing and sales, and data transmission.

These training centers are financed primarily by CWA. Our locals support the cost of fixed property and materials. The participants, however, must pay for their tuition, and many trainees, and they are paid generally by the employer, many of those trainees will use the tuition assistance programs of the employers.

You can see the tremendous impact the taxation of these employer-paid educational benefits will have on our membership. Consequently, if Congress fails to enact S. 249 and returns to the previous tax rules, our members will be required to pay income taxes on the value of those contributions. Needless to say, that would be a tremendous disincentive to participate, and the ultimate result would be our members' inability to keep the jobs in tomorrow's future.

Senator PACKWOOD. I might add there is a further problem. If we go back to the old distinction between job related versus not job related, the employer is faced on every occasion with trying to figure out if this is tax exempt or nontax exempt education. If it is nontax exempt, then you have to withhold on it. Ultimately the employers will say, "This is just too complicated. It is not worth the hassle to try to figure out."

Mr. NICHOLS. Yes, sir, that is absolutely correct.

Our experts and the best experts we were able to gather agree that tomorrow we'll have increasingly high technology and that our people must prepare themselves today.

We have reached the point where employers traditionally in the past have been expected to furnish training on their time. Because of the massive training that is going to be required in the future, that will no longer, in all probability, continue to prevail. Our people must prepare themselves, and the only way they can do it is by giving the breaks that are necessary for them to be able to do so.

Some of the advanced technology beyond the computer field that involves us to a great extent is fiber optics, using light waves rather than heavy cable for data and voice communications. Our people have been prepared in the past, but they can no longer use the skills that they have learned. They have got to go to the trade schools and various other places in order to get this training.

We also support in CWA S. 249 because of its ability to aid women and minorities, people who have been excluded from the generally higher paid skilled jobs. Our training, our apprenticeship programs, make a special effort to involve these groups. We have had great success promoting minorities and women in a field that was previously almost totally reserved for white males. One important factor has been the ability of CWA members to get skills training through employer-paid tuition programs.

Another specific example: AT&T Long Lines of New York will soon shut down its operations, in part due to the impact of high technology and new technology. Six hundred employees are involved in long-distance, overseas communications; 95 percent of these are females, and 85 percent of them are minorities. Most are in their late forties.

While these members have certain skills—all are bilingual—they are relatively unprepared to succeed in the emerging high tech economy. We plan to aid these women through training programs, but Federal policy could undermine their future by penalizing them through taxing their tuition assistance. We think that is hardly a fair or responsible approach.

Finally, CWA supports and urges enactment of S. 249 to insure that we do not return to the previous inequitable policy of taxing moderate and lower income workers while exempting those at the higher end of the scale. The pre-1978 strict requirement that employer-reimbursed tuition assistance relates solely to present job responsibilities clearly worked—clearly worked—against anyone outside of management responsibility. Yet such workers, CWA members among them, are the absolute backbone of America's work force. Taxing them in effect closes the door of self-improvement while leaving it open to those already advantaged; obviously a discriminatory policy.

In sum, we support this legislation not only for its positive effects on our membership but also for the benefits it provides for the U.S. economy as a whole, for groups such as women and minorities, and for all nonmanagerial employees.

Thank you, sir.

[The prepared statement of M. E. Nichols follows:]

TESTIMONY ON EMPLOYEE EDUCATIONAL ASSISTANCE EXTENSION ACT (S. 249) BY M. E. NICHOLS, EXECUTIVE VICE PRESIDENT, COMMUNICATIONS WORKERS OF AMERICA BEFORE THE SENATE FINANCE SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

Mr. Chairman, Members of the Committee: thank you for this opportunity to testify in support of S. 249, the Employee Educational Assistance Act.

My name is M. E. Nichols, I am an Executive Vice President of the Communications Workers of America (CWA), which represents some 675,000 workers in telecommunications, cable TV, public service, and data transmission, among other fields. Most of our members are employed by AT&T and the Bell System.

This legislation to extend the present tax-exempt status of employer-paid education and training would have a profound impact on the employment security of our members. It has the important additional benefits of protecting America's superiority in high technology industries, of aiding skills development for women and minorities, and of eliminating penalities imposed on non-managerial employees under the pre-1978 tax laws.

CWA has a long-held commitment to providing our members with an opportunity for employment security through training and skill improvement. We have designed and now operate several innovative programs tailored specifically to the needs of our membership in the rapidly developing high-tech service and information-transfer economy.

One such program, supported by our National Training Fund, which will receive formal accreditation in May, authorizes the establishment of training centers in such communities as Indianapolis, Phoenix, Los Angeles, and Denver. In fact, our Indianapolis facility officially will open its doors just three days from today, on May 2.

These centers provide training for a wide range of skills, from electronics to computer use and programming to human relations and marketing. The training needs are determined by the union locals participating in the centers, usually in close cooperation with area employers having CWA-represented workers and with both CWA-employed and outside educational experts. Our chief criterion for determining skill requirements is employment security, and we, therefore, take into account the expected direction of the employer-company as well as of the industry as a whole.

The Indianapolis center, for example, has set up courses in such areas as computer literacy, computer technology for both users and technicians, computer programming, marketing and sales, and data transmission. Training participants will complete their courses with a facility in the theory, use and service of such sophisticated technology as fiber optics, micro-wave, and computer components from microchips to keyboards.

These training centers are financed primarily by CWA. Our locals will support the costs of fixed property and materials, for example. The participants will pay for their tuition, however, and many trainees therefore will utilize the tuition assistance programs we have established with our employers.

You can begin to see, then, the tremendous impact taxation of employer-paid educational benefits would have specifically on CWA's membership. This whole, rather ambitious program is aimed not merely at reinforcing current skills, but at developing the new skills required for future employment. Consequently, should Congress fail to enact S. 249 and thus return to the previous tax rules, our members would be forced to pay income taxes on the value of employer contributions toward tuition for this and other training programs. Needless to say, there would be a tremendous disincentive to participate, with the ultimate result being our members' inability to compete for jobs in the modern economy.

But the effects of such tax policies go far beyond CWA's membership. Or perhaps I should say that the predicament faced by CWA members, who are fortunately among the best-positioned of all workers to succeed in a high tech world, is a prime example of the consequences for tens of millions of American workers if U.S. policy reverts to one of discouraging self-improvement.

Experts predict that tomorrow's economy will be increasingly high tech in nature. The communications and service sectors are projected for explosive growth rates. In fact, high tech industries are one of the few remaining economic growth areas, as well as what often appears to be the last reserve of American dominance in the world economy. Clearly, then, technology offers tremendous opportunity, providing hundreds of thousands of jobs in the future.

High tech industries are characterized by vast and rapid change, however, the skills of today will be obsolete tommorrow. So a key policy question is: how long and how well will America's workers be employed, given the huge and often devastating impact of technological change? And if American workers cannot keep up with the pace, how will the U.S. be able to maintain its technological edge?

The answer to these questions in large part relies on the ability of American workers to get the training necesssary to compete. And it practically goes without saying that employer-supported tuition for training and education programs is a key, even essential, component of the answer.

The CWA situation is illustrative. Most of our members work for AT&T and the Bell System, which are undergoing tremendous change. There's no doubt that American phone service is the best in the world. Part of what makes it such a great communications system is the development of advanced technology and the service and maintenance of it. Yet there is a continual threat to U.S. dominance, often due to distorted trade laws.

Take fiber optics, for example. The huge advance of using light wires rather than heavy cable for data and voice communications is a Bell Labs-Western Electric invention. It will vastly increase our communications system capacity and efficiency. But as in so many other areas, Japan is gaining on us.

Still, the servicing of fiber optics, whether American or Japanese, involves domestic labor. Many of our members today are well equipped to handle the task, but as use of the technology grows and changes, additional workers must be skilled, unless we intend to take the ridiculous step of importing labor. Training programs are the route to follow, therefore, and employer support, without a tax penalty for the worker, is essential.

CWA also supports S. 249 for its ability to aid women and minorities who often have been excluded from the generally higher paying skilled jobs. Our training and apprenticeship programs make a special effort to involve these groups. And we have had great success in promoting minorities and women into fields previously all-but-reserved for white males. Again, one important factor has been the ability of such CWA members to get skills training through employer-paid tuition programs.

To cite another specific CWA example: An AT&T Long Lines office in New York soon will shut down operations, in part due to the impact of new technology. Some 600 employees involved in long distance overseas communication thus will be unemployed. Over 95 percent of these workers are female and 85 percent are minority. Further, most have more than 25 years seniority and are in their late 40s.

While these CWA members already have substantial skills (e.g., all are bilingual), they are relatively unprepared to succeed in the emerging high tech economy. We plan to aid these women through training programs. But federal policy could undermine their future by penalizing them through taxation of tuition assistance. Hardly a fair or responsible approach.

Finally, CWA urges enactment of S. 249 to ensure we don't return to the previous inequitable policy of taxing moderate- and lower-income workers while exempting those at the higher end of the scale. The pre-1978 strict requirement that employer-reimbursed tuition assistance relate solely to present job responsibilities clearly worked against anyone outside of management positions. Yet such workers, CWA members among them, are the backbone of America's workforce. Taxing them in effect closes the door of self-improvement while leaving it open to those already advantaged; obviously, a discriminatory policy.

In sum, CWA supports this legislation not only for its positive effects on our own membership, but also for the benefits it provides for the U.S. economy as a whole, for groups such as women and minorities, and for all non-managerial employees.

Senator PACKWOOD. Mr. Nichols, thank you.

Specifically, I like the example of the Long Line office where there are bilingual people trained for a very specific job. But, clearly, if they are going to move to something else, it is not going to be the same job. They are women, they are in their forties, they are obviously good workers—that is the kind of specific example that is very helpful in selling this bill.

Mr. NICHOLS. Thank you, sir.

Senator PACKWOOD. Mr. Maibach?

STATEMENT OF MICHAEL C. MAIBACH, GOVERNMENT AFFAIRS DIRECTOR, CATERPILLAR TRACTOR CO., PEORIA, ILL.

Mr. MAIBACH. Good morning, Senator.

Ladies and gentlemen, my name is Michael Maibach with Caterpillar Tractor Co., headquartered in my home town of Peoria, Ill.

For the sake of the chairman, let me be allowed the comment that we have a facility in Dallas, Oreg.; and, Mr. Bentsen, in Dallas, Tex.

Mr. Chairman, I think it is widely recognized that Americans today face changes in the workplace unknown in our Nation's history. The days when a single skill could serve a person for a lifetime are quickly fading. Often in the past an American's formal education ended the day his employment began, and that is simply no longer the case.

Individuals and American corporations are understanding this. Individuals today—21 million adult Americans—participate in continuing education. That's 13 percent of the adult population.

Seventy-five percent of companies with 100 to 500 employees, and 90 percent of companies with 500 or more employees have tuition reimbursement programs. Caterpillar, since 1954, has had a tuition reimbursement program, and it has been an excellent experience.

Mr. Chairman, I would like to mention three things about our experience at Caterpillar.

No. 1, since the enactment of your amendments in 1978, our employees have increased their participation by 50 percent because of the tax treatment.

In the 1981-82 school year alone, 2,500 Caterpillar U.S. employees received over $300,000 in tuition reimbursement for their college education—nights and weekend courses.

And finally, sir, of the classes taken the vast majority were tc prepare those people for future, not present, job responsibilities. Of those employees, 76 percent, or 3 out of 4, were clerks, secretaries, and "blue collar workers," not management employees, and that same percentage in rough numbers was related to future job opportunities.

I would like to center my testimony on the story of one employee who I have talked with extensively, and we'll call him Dick. He has been with our company for 14 years. He began in 1969 in our Mossville, Ill., diesel engine plant.

Dick came to us with a high school diploma, 2 years, Marine training, and a desire to learn. He was appointed to a position cleaning machine parts on an engine assembly line. With his GI benefits he was able to enroll at night in a community college and received a 2-year degree in business. It had nothing to do with machine assembly lines. This effort, as well as his work effort on the line, allowed him to be appointed to the 2-year apprenticeship program where he was trained for a future job, again, which was to be an excellent machinist at Caterpillar.

At the end of that 2-year program he was appointed in the East Peoria, Ill., plant to the custom-tool shop, where the very best machinists go. He immediately—and at that time your amendments were in place—enrolled in Sagamon State University's night and weekend business management degree program. As a machinist he was taking business degree courses again, and next May he will graduate with a business management degree.

Now, while he was doing all of that educational training he received three different promotions, all of which were for better jobs. He is now in the corporate headquarters in inventory control, handling the responsibility for literally hundreds of thousands of dollars of purchases a year, and the university education at Sagamon State was paid for by the tuition employee reimbursement program at Caterpillar.

I have talked to him. In addition to his family responsibility and job responsibility, this reimbursement of 70 percent of those dollars involved in that education was an excellent assistance to this gentleman who came to us, as I said, with no college training, and now has an excellent career opportunity with us, always training for the future.

Mr. Chairman, we need more success stories like this in this country, more than ever before. If you read the book by Robert Nesbeth, 'Megatrends,' you will see that people are going to have to continue their education for a lifetime.

So at Caterpiller, we enthusiastically support your legislation and thank you for this opportunity.

[Mr. Maibach's prepared statement follows:]

Prepared Statement of Michael C. Maibach, Caterpillar Tractor Co.

INTRODUCTORY REMARKS

Mr. Chairman and Members of the Committee: My name is Michael Maibach of Caterpillar Tractor Co. Thank you for this opportunity to express our support of S. 249, the "Employee Educational Assistance extension Act."

Caterpillar designs, manufactures, and markets earthmoving and construction machinery, lift trucks, and diesel, natural gas and gas turbine engines worldwide. The company currently employs over 47,000 individuals at 22 facilities across the United States . . . including, Mr. Chairman, 240 at our Dallas, Oregon plant.

RAPIDLY CHANGING WORKPLACE

It is widely recognized that Americans today face changes in the workplace unknown in our Nation's history. Simply stated, the days when a single skill would serve a working person for a lifetime are quickly fading. Often in the past, an American's formal education ended the day his employment began. That is no longer—can no longer be—the case.

Adults recognize this fact of life and are returning to the classroom in record numbers. For example, in 1981 more than 21 million persons, about 13 percent of the total U.S. adult population, participated in adult education programs. According to the bureau of the census, 60 percent of that course work was directly job-related.

American corporations have responded positively to the need for continuing educational programs. They have invested heavily in human, as well as capital resources.

Reflection of our committement is the fact that today, 75 percent of U.S. companies whith 100 to 500 employees and 90 percent of companies with 500 or more employees, have tuition reimbursement programs. And the numbers are growing.

Caterpillar is one such company. We have been offering our employees tutition reimbursement for work-related study since 1954. We believe our experience demonstrates that importance of the legislation—S. 249—that you're now considering.

THE CATERPILLAR EXPERIENCE

Caterpillar does not think of its Employee Educational Assistance Plan—a program of tuition reimbursement—as a frill or "fringe benefit." Rather, the company believes the ongoing education of its employees is a long-term investment—an investment as vital to its future as applied research or the purchase of new machinery.

I would like to share with you some data about Caterpillar's educational assistance programs, which I think are relevant to the decision now before you. We've found that:

Since 1978, employee participation in Caterpillar's Educational Assistance Plan has increased by 50 percent. We believe this is directly related to changes in the tax laws that made reimbursement for courses related to future opportunities tax-exempt.

During the 1981-1982 academic year, 2,500 Caterpillar's employees were reimbursed for over $300,000 in tuition costs.

Of the courses taken, the vast majority would prepare the individual for future rather than present job responsibilities. Of those employees who participated in the Caterpillar program, 76 percent were clerks, secretaries, . . . and "blue collar" workers. The skills they sought to develop represented the key to career advancement.

Following is a breakdown of the kinds of course work supported by our program:

32 percent: General Education Diploma, basic math, science and english, and liberal arts;

30 percent: Data processing, computer science, and advanced science and mathematics;

20 percent: Business administration, finance and accounting; and

18 percent: Personnel management and labor relations.

Clearly, the Caterpillar experience supports the importance of the tax exemption program to non-management employees, those most vulnerable to workplace displacement.

By way of example, I would like to recite the story of a 14-year Caterpillar veteran—we will call Dick.

Dick came to work at Caterpillar's Mossville, Illinois engine plant in 1969 after a tour of duty with the Marine Corps. He came with a high school diploma, two years of artillery training, and desire to learn new skills for the future. His first assignment was on third shift, cleaning machined parts in preparation for assembly.

With Veterans benefits still available, Dick enrolled as an evening student at an area community college, and by 1975 he had received an Associate Arts degree in business. He had also begun to distinguish himself as a hard-working and energetic Caterpillar employee.

Job performance, plus his community college work led to Dick's placement into the company's much sought after apprenticeship program. Upon graduation from this two-year program, he was assigned to Caterpillar's East Peoria Plant custom tool shop . . . a position reserved for the best machinists.

In the meantime, with the support of Caterpillar's tuition reimbursement plan, Dick enrolled in a management degree curriculum. The courses he chose were oriented toward future job responsibilities.

By 1979 Dick had left his machinist work and had begun a new career in Inventory Control.

Two promotions later, Dick assumed an important position in corporate headquarters. Late this year he'll receive his Bachelor of Arts degree in management; a promising career lies ahead.

Tuition reimbursement, of the kind stimulated by present U.S. tax law, played a substantial part in making possible the personal accomplishment of this particular Caterpillar employee. Others have done the same.

Mr. Chairman, I think you'll agree that we need more success stories like this one. With the pressures of current job and family responsibilities, as well as the high cost of living, taxing employee tuition reimbursement would add still another disincentive to self-betterment. Rather, we believe it makes more sense for public policy to encourage personal improvement. S. 249 will do so.

At Caterpillar, like many other companies, those who have the most to gain from continuing their education are those who must—of necessity—take courses related to future, not present, responsibilities. We believe that it is in the best interest of the individual, the employer and the Nation that these self-initiatives be encouraged.

Thus we encourage this committee, and the U.S. Congress as a whole, to support S. 249.

Senator PACKWOOD. Let me ask you one question before we go on to the next witness: Why does Caterpillar choose to reimburse the employees for tuition rather than paying it directly to the educational institution?

Mr. MAIBACH. Mr. Chairman, when an employee comes to us and says he'd like to take, let's say, an accounting course, and we OK that as something job-related or future job-related, they have the responsibility to go to the university and pay the money, complete the course successfully—A, B, or C grade; we don't accept less than that—and then we reimburse.

Were we to give the money to them beforehand and for some reason they would have to drop the course or get an unsatisfactory grade, we would have a situation where we simply invested money that was not a good investment for us. We could not do it any other way and have any sort of quality control.

Senator PACKWOOD. Thank you.

Mr. Stone?

STATEMENT OF PHILIP STONE, MANAGER, PERSONNEL SERVICES, CAROLINA POWER & LIGHT CO., RALEIGH, N.C.

Mr. STONE. Thank you, Mr. Chairman.

I am Phil Stone, manager, personnel services, Carolina Power & Co. in Raleigh, N.C.

Our company has about 8,600 employees and has increased its employee population by 145 percent in the past decade. This is an indication of our need for highly skilled and, being a part of a technically oriented industry, technical, craft and professional, personnel.

If we link our need for highly technical people with the deterioration rate that is occurring because of the advances in technology and the rapidity of that deterioration, you can probably understand why we emphasize employee initiated training and educational assistance.

No less important, of course, is the fact that the manpower market for the past decade has been very marginal in its ability to supply technically competent personnel.

We instituted educational assistance in 1968. The courses must be taken at an accredited university or school, and the employee must pass the course with a grade satisfactory to the school's requirements. We do not offer this support for dependents or spouse.

The assistance initially was at a 75 percent reimbursement level. Our employees found that they were actually realizing, after taxes, only about 50 percent of their cost, and that was a demotivator.

We then decided that we would cover at 100 percent, which would allow them to realize more return, and for the 4 years following our action to increase to 100 percent reimbursement we increased our employee population by about 10 percent but had only a 1-percent increase in participation.

Then 1978 came along, and your bill changed the tax method. During the next 4 years our employee population increased 21 percent, but participation in educational assistance increased nearly 66 percent.

The benefits to our company and its employees have been covered in other testimony and in your own experience. I would like just to review a few of those for a moment.

Most of the employees in our program, particularly those in the lower level job classifications and with limited discretionary income, would be inhibited from enhancing their career development due to the added out-of-pocket costs resulting from tax withholding. We do not reimburse for the cost of books, travel, meals, student fees, and certain other items.

I am providing for you a list of typical career development achievements by employees in which you will see that clerical employees have qualified for professional positions, technicians have qualified for engineering positions, and supervisors have become managers.

Many employees will be inhibited in maintaining the skills and the knowledge level achieved in earlier academic experiences because of the deterioration rate as technology advances.

Employee productivity may diminish from lack of motivation and opportunity to upgrade knowledge and skills.

We feel morale will suffer from receiving fewer reimbursement dollars than expected, even though expectations are based on incomplete understandings.

And of course, as has been mentioned, the company administrative costs will increase due to the need to withhold on reimbursements and to make judgments as to which are subject to withholding and which are not.

The reduction in the technical work force available will significantly impact our ability to fill technical positions.

In conclusion, educational assistance is not a fringe benefit for our employees; it is an opportunity for them to sustain, achieve, and grow in competence and career. It is a recruitment, productivity, cost control, and affirmative action tool for my company. I urge you to continue to support S. 249.

Thank you.

[Mr. Stone's prepared statement follows:]

CP&L
Carolina Power & Light Company

Statement of
James P. Stone
Manager-Personnel Services
Carolina Power and Light Company

Hearing on S. 249 - - The Employee Educational Assistance Extension Act

Subcommittee on Taxation and Debt Management
Senator Robert Packwood, Chairman
April 29, 1983

411 Fayetteville Street • P. O. Box 1551 • Raleigh, N. C. 27602

I am Phil Stone, Manager - Personnel Services, Employee Relations Department, Carolina Power & Light Company, Raleigh, North Carolina. My area of responsibility includes Corporate Recruitment, Supervisory and Management Development, the coordination of Craft and Technical Development, manpower forecasting and other elements of human resource planning. I have served on the committee of the Public Utility Management Course sponsored by the Southeastern Electric Exchange; and for two terms as Chairman - Training and Development Committee of the Edison Electric Institute. This latter committee serves as the focal point for the training and development activities of nearly 200 investor owned utility members of E.E.I. across the country. I have been in the Employee Relations Department of CP&L for 17 of my 33 years with the company. During these 17 years, I have guided the establishment and growth of each of the functions I now manage.

My company is an electric service utility serving approximately 650,000 customers in a 30,000 square mile area of North and South Carolina. As I am sure you are aware, ours is a capital intensive, technically based industry. Carolina Power & Light Company has about 8,600 employees. Approximately 2,400 employees (27%) have 10 or more years service. Employee population has grown from 3,500 to 8,600 (145%) in the last decade.

Linking CP&L's employee growth rate with our highly technical characteristics and adding the known technical competency deterioration rate resulting from the rapid advancements in technology will aid in understanding our motivation for an educational assistance program. No less important is the knowledge that the manpower market for the past decade has been marginal, at best, in its ability to supply the technically competent personnel required by industry. For these and related reasons we added Educational Assistance to our benefit package in 1968.

Courses taken under our program must be offered by an accredited educational institution; and the employee must pass the course with a grade satisfactory to the school's academic requirements. An employee's application for eligibility approval before taking a course and reimbursement after satisfactory completion must have evidence attached documenting such facts as accreditation, cost, and grades. Both line management and Employee Relations staff must approve all applications. Initially, our Educational Assistance Program allowed reimbursement of 75% of the cost of registration, tuition, and laboratory fees to employees whose course work was career related. In 1974 we increased the reimbursement level to 100%.

Over the next 4 years, 1974 through 1977, employee participation in our program increased only 1.2% while employee population increased 10.2%. The next 4-year period, 1978 through 1981, employee participation increased 65.7% while population increased 21%. Supporting data - Attachment A.

The benefits to any company and its employees have, or will be, covered in other testimony presented to you. So, I would like to close my remarks with comments on the disadvantages which may accrue if S. 249 fails passage.

--Many employees, especially those in the lower level job classifications and those with limited discretionary income, will be inhibited from enhancing their career development due to the added out-of-pocket costs resulting from tax withholding. Keep in mind that in our program, and many others, the cost of books, travel, fees, and other items are not reimburseable. On Attachment B, I am providing for you a list of typical career development achievements by our employees. You will see that clerical employees qualify for professional positions, technicians may become engineers, and supervisors become managers.

--Employees may be inhibited in maintaining the skill and knowledge level achieved in earlier academic experiences which deteriorate as technology advances over time. Much of this skill and knowledge relates more to their advance career levels rather than current assignments.

--Employee productivity may diminish from lack of motivation and opportunity to upgrade knowledge and skills.

--Employee morale will suffer from receiving fewer reimbursement dollars than expected, even though the expectations were based on incomplete understandings.

--Company administrative costs will increase due to the need to withhold on reimbursements and the need to determine which situations require withholding and which do not.

--The reduction in technical workforce availability will significantly impact our ability to fill technical positions. This would impact productivity, recruitment costs, and ultimately consumer costs.

Gentlemen, educational assistance is more than a "fringe benefit" for our employees. It is an opportunity to sustain, achieve, and grow in competency and career. It is a recruitment, productivity, cost control, and affirmative action tool for my company.

I urge you to support S. 249.

ATTACHMENT A

EDUCATIONAL ASSISTANCE PROGRAM

	Courses Completed	Courses Pending Completion
1982	654	685
1981	580	995
1980	489	709
1979	223	431
1978	174	367
1977	142	290
1976*		
1975	144	162
1974	159	268
1973	68	157
1972	56	80

*Due to suspension of the program, no figures are available for 1976.

TOTAL EMPLOYEE POPULATION

Year	Number of Employees
1982	8,376
1981	7,181
1980	6,522
1979	6,247
1978	5,671
1977	5,281
1976	4,983
1975	4,749
1974	4,742
1973	4,397
1972	3,569

ATTACHMENT B

TYPICAL CAREER DEVELOPMENT ACHIEVEMENTS IN THE EDUCATIONAL ASSISTANCE PROGRAM 1978-1983

Degree	Date Received	Former Classification	Promotion	Date
BA	1985 (will complete)	Stenographer	Prod. Assistant	1983
BA	1983	Technician I	Specialist	1983
BA	1983	Tech. Clerk	Technician I	1983
BA	1982	Clerical Supervisor	Prof. Class.	1982
BA	1981	Sr. Specialist	Proj. Spec.	1981
BA	1981	Prod. Assistant	Jr. Specialist	1981
BA	1980	Acct. Clerk	Accountant	1981
AAS	1982	Clerk	Tech. Aide	1982
MBA	1983	Supervisor	Director	1982
MBA	1983	Sr. Accountant	Proj. Accountant	1982
MBA	1982	Sr. Accountant	Supervisor	1981
MBA	1980	Accountant	Sr. Accountant	1979
MS	1983	Project	Principle	1982
ICS-EE	1984 (pursuing)	Eng. Aide	Eng. Tech. I	1982
ICS-EE	1983	Sr. Specialist	Sr. Engineer	1983
ICS-CE	1982	Tech. I	Asso. Engineer Engineer	1982 1983
ICS-EE	1982	Tech. I	Asso. Engineer	1982
ICS-EE	1981	Tech. I	Asso. Engineer	1982
ICS-ME	1981	Tech. I	Engineer	1981
ICS-CE	1981	Specialist	Engineer	1982
ICS-ME	1980	Tech. II	Asso. Engineer	1980
ICS-EE	1980 (3 parts toward completion)	Tech. II	Tech. I (early promotion)	1982
ICS-EE	1980	Tech. I	Engineer	1980
ICS-EE	1979	Tech. I	Engineer	1979
ICS-EE	1979	Tech. I	Engineer	1979
ICS-CE	1978	Specialist	Engineer	1981
ICS-ME	1978	Tech. I	Asso. Engineer	1979

3/83

ATTACHMENT C

Educational Assistance Program

To assist and encourage voluntary employee development, the Company offers an Educational Assistance Program for regular, full-time employees who have at least six months of continuous service.

Through this program the Company will refund, subject to the conditions outlined, 100 percent of the charges for: tuition, registration, and laboratory fees. Not included in the program are the costs of books, supplies, travel, financing, or carrying charges, and related items.

Any accredited high school, business school, community college, technical institute, college, university, or correspondence school is eligible for selection. The approval of a school or course of training under the program will be determined after the employee has submitted an application.

Courses must be taken on the employee's own time and:

(1) directly contribute to the achievement of the employee's assigned job responsibilities with the Company as judged by management, or

(2) directly contribute to the growth of the employee's potential with the Company as judged by management, or

(3) be a part of a program leading to a degree pertaining to the employee's work, as specified in "1" or "2" above.

All applications must be approved by the appropriate department head with the concurrence of the manager of the Employee Relations Department. In addition, applications involving degree programs and diploma programs (which may be accepted in lieu of the degree) must be approved by the appropriate group executive.

Degree programs that allow academic credits for "life experience" are specifically excluded from coverage under this Educational Assistance Program.

To apply for benefits under this program, an applicant must be a regular, full-time employee with at least six months of continuous service before applying for assistance. Applications should be submitted for approval at least three weeks prior to registration for the course. The applicant must complete and submit to the supervisor Part I of the Educational Assistance Application form. In the case of correspondence courses, the application must be submitted with an attached statement of costs and must be approved prior to enrollment in the course.

To receive the benefits the applicant must be a regular, full-time employee of the Company and have satisfactorily completed the approved course. The employee must then submit to the supervisor:

(1) the original copy of the application form with Part II completed, and

(2) a written record from the school showing:

   (a) satisfactory completion of the course according to the school's standards, and

   (b) those educational charges subject to the benefits under the program.

Assistance from other student aid programs, including that from federal or state government legislation, will not be duplicated by the Company. However, the difference, if any, between such aid and the educational charges (covered by the Company's program) will be refunded according to the provisions of this program.

Any employee who voluntarily leaves the Company after receiving benefit payments under the program will be required to repay the full amount(s) paid by the Company for courses completed during the 12-month period preceding the resignation. In addition, an employee who receives a degree or a diploma (which may be accepted in lieu of a degree) under the program and subsequently resigns from the Company will be required to repay the full amounts paid by the Company for courses taken during the three-year period preceding the resignation.

Senator PACKWOOD. I couldn't have said it any better had I written it myself.

Ms. Horrell?

STATEMENT OF MS. BARBARA HORRELL, CONTINUING EDUCATION COORDINATOR, HEALTH SCIENCE CENTER OF MISSOURI, COLUMBIA, MO., ON BEHALF OF THE AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT MINORITY NETWORK

Ms. HORRELL. Good morning, Senator.

Let me tell you a little bit about myself first. I am a continuing education specialist at the University of Missouri School of Medicine, and I'm here today to represent the Minority Network of the American Society for Training and Development.

I have been in the health care and human resource development field for 20 years, and for a number of those years I have been a trainer and program developer for hospitals in the State of Missouri.

I am currently the 1983 chairman of the Minority Network and serve on the National Leadership Development Task Force. This meeting today coincides with the Minority Network Executive Committee, and in fact some of our members are here with us today. I have attached a list of our membership's, executive committee throughout the country.

We appreciate the opportunity to review our viewpoints on this particular act, S. 249, and we want to reinforce that we are fully in support of S. 249 and urge again for the bill's passage.

I would like to emphasize that employees in unskilled and entry-level programs and positions frequently are minority and women, and they have been discriminated against because, in effect, the regulations in the pre-1978 years restricted them from getting any assistance.

Now we are seeing that those particular people are having the opportunity, they are using the opportunity, and they are not abusing it. There is high morale, there is high productivity, they are better citizens, and they are better employees. I can attest to this, also, because I am not only an instructor but I am a user of the system. I have seen it from both sides.

We also feel, at a time when the Nation faces a critical need to enhance the work force, three-fourths of all entry-level unskilled workers in the United States are minority and women. We see this bill as a vital tool in promoting equality and opportunity for all of our employees.

Reverting to the old regulations would clearly discriminate, with the impact mostly on women and minorities.

In my own experience at the university, in just looking at some figures before we came, I noticed that of 28 programs that we offer, 370 of the participants that we listed, 75 percent of those were women and minority in entry-level or lower positions who are now training for other areas.

If this was not possible those people would not be taking the courses, because they cannot afford it.

Employer-provided education is especially important in that it provides greater access to education and opportunity for those who have limited access, meaning minorities, women, and the unskilled, and these people are going to be most directly affected by this legislation. Women and minorities are those who are most in need of the new skills and who can least afford—and I restate, least afford—to pay taxes on additional training. These individuals would be less likely to participate if we required new skills and we had to pay for that particular education.

In conclusion, I would like to thank you again for your interest in promoting human resource development in the work force. And my network and any of us at ASTD would very much like to work with the subcommittee in promoting permanent extension of the employee education assistance.

Thank you.

Senator PACKWOOD. Your statement and others that this clearly discriminates against lower-paid employees was graphically proven when we had this bill in 1978.

I knew a vice president of IBM; I read a list of the Brookings courses that they were giving for executives. Electronic communications was one of them, another was fiscal management, a third was government affairs. There were a half dozen. I asked him if there were any of those courses that would not be tax deductible. And he said, "No." In some way his job tertiary touched them all, and it would be tax deductible. Yet for someone who is 19 or 20, just starting out, you would be very hardpressed under the old rules to find one that was tax deductible, unless it was just going to keep them in the job they were in.

Ms. HORRELL. Very definitely.

Senator PACKWOOD. Dr. Parnell?

I might say Dale is an old acquaintance of mine. He used to be Oregon superintendent of education, which was an elected public position. He would have had an extraordinary political future in other areas, I think, had he chosen not to leave. But he got stolen away by a California community college and has now gone on to become the president of the American Association of Community and Junior Colleges.

It's good to have you back.

[The prepared statement of Ms. Horrell follows:]

Minority Network

ASTD

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Statement of

Barbra Horrell

Continuing Education Coordinator
Health Sciences
Center

Columbia, Missouri

on behalf of

American Society for Training and Development Minority Network

regarding

The Employee Educational Assistance Extension Act

Taxation and Debt Management Subcommittee

of the Senate Finance Committee

Robert Packwood, Chairman

April 29, 1983

Good Morning. I am Barbra Horrell, Continuing Education Coordinator for the Health Sciences Center of Columbia, Missouri. I am here today representing the Minority Network of the American Society for Training and Development. I have worked in the human resource development field for more than 20 years, including directing training and education programs for various hospitals in Missouri. My present responsibilities include providing continuing education programs for hospitals, nursing home personnel, and planning, designing and implementing training programs through the University of Missouri. I have also served on the Chancellor's Status of Women Committee, the Personnel Advisory Board for the City of Columbia, and the executive board of the United Way of Columbia.

I am currently ASTD's 1983 Chair of the Minority Network, and serve on the National Leadership Development Task Force. This hearing coincides with a meeting of the ASTD Minority Network Executive Committee. In fact some of our members are with me this morning to further demonstrate our support and commitment to employee educational assistance and work force proficiency. (I have attached a list of ASTD Minority Network Executive Committee.)

We appreciate the opportunity to present our views on The Employee Educational Assistance Extension Act, S. 249. The Employee Educational Assistance Extension Act makes permanent some vital employer-provided education assistance provisions of the Revenue Act of 1978. These provisions exempt employer tuition aid reimbursement programs and employer-provided courses of instruction from gross income when the employer has a qualified plan that is non-discriminatory. We fully support S. 249 and urge the bill's passage.

Before 1978, IRS regulations required employees to pay income tax on any educational assistance not directly related to present job responsibilities. I would like to emphasize that employees in unskilled and entry-level positions, frequently minorities and women were discriminated against, because, in effect, the regulations restricted them to a very narrow range of non-taxable education assistance from their employers. For example, a manager would have a much broader range of job responsibilities that could be considered as non-taxable for tuition assistance, than could a secretary's job. Employees, then, who tried to improve their job skills and advance their careers were being taxed by the Internal Revenue Service for their efforts.

These pre-1978 regulations were actually a disincentive for upgrading skills. Further, these regulations, in effect, were in conflict with existing equal employment opportunity and affirmative action guidelines promoting upward mobility and continuing education of employees.

The employer-provided educational assistance provisions of the Revenue Act of 1978 ended this discrimination by allowing employees to take career related training and education courses to upgrade skills and learn new job responsibilities without paying income tax on the value of the training. The law has been in effect for five years, and has worked well with no reported abuse or mismanagement of educational assistance programs.

At a time when the nation faces a critical need to enhance the quality of the work force, and at a time when 3/4 of all entry-level unskilled workers are minorities and women, we see S. 249 as vital in clarifying the tax status of employer sponsored training and education in order to promote equality and opportunity for all employees. Reverting to the old IRS regulations with the constraints of job relatedness would clearly result in discrimination of employer educational assistance opportunities for women and minorities.

In my own experience with the University of Missouri at Columbia, for example, figures from 28 programs at the Health Sciences Center show that of 370 participants enrolled in continuing education courses, 280 or 75% were minorities and women. This proportion would undoubtedly be reduced if they were required to pay income tax on the value of the education they are receiving.

Employer-provided education assistance is especially important in that it provides greater access to education and economic opportunity to those who have had limited access - minorities, women and the unskilled. These are the workers most directly affected by this legislation. Women and minorities and the unskilled are those most in need of new skills and can least afford to pay taxes on additional training. Those individuals would be less likely to participate in any new skill development if additional taxes are withheld from their paychecks. This can only serve as a disincentive. S. 249 insures that minorities and women have equal access to upward mobility and lifelong learning provided by employers.

That concludes my statement. Thank you for your interest in promoting human resource development for the work force. We will be happy to work with the subcommittee in promoting the permanent extension of employee educational assistance.

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STATEMENT OF DR. DALE PARNELL, PRESIDENT, AMERICAN ASSOCIATION OF COMMUNITY AND JUNIOR COLLEGES, WASHINGTON, D.C.

Dr. PARNELL. Thank you, Senator. I still have webs between my toes. [Laughter.]

And moss on the back.

Senator PACKWOOD. Judging by the recent California weather, you probably feel right at home there. [Laughter.]

Dr. PARNELL. You have heard a lot here this morning. I am reminded of that famous American philosopher, Mae West, when she said, 'Too much of anything is simply wonderful!" [Laughter.]

I shall just reiterate that the higher education community is strongly supportive of S. 249, The Employee Education Assistance Extension Act.

I am speaking this morning on behalf of the 1,200 community, technical, and junior colleges of the country, and I am joined in this testimony by the American Council on Education, which represents another 1,500 higher education institutions.

The Congress found many sound reasons in 1978 to establish the law that excludes from taxable income any tuition an employer paid to cover career education for an employee.

As skill renewal and job training become increasingly important to our Nation's ability to meet global competition, those same reasons surely are yet more valid today. Upward mobility among those who now have jobs within the companies and agences that employ them will play an important and growing role in overcoming the severe unemployment which grips our economy, and in opening up jobs for displaced workers and the unemployed.

Community, technical, and junior colleges have become a major contributor to that upward mobility. We see it at work every day on our campuses across the country in our occupational courses, and particularly in programs we call employer specific, our cooperative kinds of programs.

Our association has over the past 2 years worked hard to stimulate even more such programs and cooperative programs with the private sector. It is central to the broad charge that we have set for ourselves to help put Americans back to work and to help put American enterprise back on its feet.

In the course of our work in this area we have identified virtually thousands of examples of cooperative ventures between our colleges and local business and industry, public and private employers. This involves some of the largest companies of the country. The latest of our work is with the United Auto Workers and Ford Motor Co., working with them in the training of displaced workers.

These programs range all the way from sophisticated high technology instruction in electronics to management and supervision to word processing to English as a second language.

These programs are paid for by these firms, and they are high-quality, low-cost programs offered at times and in locations convenient to the learners and to the firms. Many of them are conducted inplant, and many of them are conducted during working hours.

Mr. Chairman, I dwell on these details only to demonstrate the private sector's commitment to training its employees, and the cooperative nature of that enterprise. They should be encouraged to do so, and to do so at even greater levels. Passage of S. 249 would provide some of this encouragement. It would also serve to eliminate the disincentives and the discriminatory character of taxes on employee training, an investment in human resource development.

In conclusion, I would urge the adoption of S. 249 as an investment in the greatest resource we have in this country, the human resource. We tell young people, "Don't waste your time," and then we let them grow up and waste their lives. I encourage this kind of legislation.

[Dr. Parnell's prepared statement follows:]

STATEMENT OF DR. DALE PARNELL

Mr. Chairman, the higher education community is strongly supportive of S. 249, the Employee Educational Assistance Extension Act. The American Council on Education, in a letter addressed to the Committee on Finance on April 6, in behalf of ten associations of higher education, including AACJC, expressed the support of our community for the bill, and we want to reaffirm that support here in more detail. With your permission, we would like that letter inserted at this point in the record.

The Congress found many sound reasons in 1978 to establish the law that excludes from taxable income any tuition an employer paid to cover career education for an employee.

As skill renewal and job training become increasingly important to our nation's ability to meet global competition, those same reasons surely are yet more valid today. Upward mobility among those who now have jobs, within the companies and agencies that employ them, will play an important and growing role in overcoming the severe unemployment which grips our economy, and in opening up jobs for displaced workers and the unemployed.

Community colleges have become a major contributor to that upward mobility. We see it at work every day on our campuses across the country in our occupational courses, and particularly in programs we call "employer specific."

The American Association of Community, Technical, and Junior Colleges (AACJC), the organization for which I serve as President, has over the past two years worked very hard to stimulate even more such programs with the private sector. It is central to the broad charge we have set for ourselves to Put America Back to Work and to help put American enterprise back on its feet.

In the course of our work in this area, we have identified virtually thousands of examples of cooperative ventures between our colleges and local industry that involve some of the largest companies in the country (IBM, Mobil Oil, General Motors, Ford Motor/UAW, Tektronics, and others) as well as medium and small firms. These industry-specific training programs range all the way from sophisticated, high technology instruction in electronics (CAD-CAM) to management and supervision to word processing to English as a Second Language. These programs are paid for by the firms. They are high-quality, low-cost programs offered at times and in locations convenient to the learners and to the firms. Many of the are conducted in-plant, during work hours.

Mr. Chairman, I dwell on these details to demonstrate the private sector's commitment to training its employees and as a means of showing that they recognize the need for and the benefits derived from effective and responsive employee training. They are anxious and willing to spend their monies for these purposes.

They should be encouraged to do so, and to do so at even greater levels. Passage of S. 249 would provide this encouragement and would also serve to eliminate the disincentives and discriminatory character of taxes on employee training.

Mr. Chairman, you know that the substantial funds made available by the private sector for tuition support for employee training has been under-used in the recent past. The National Institute for Work and Learning, for example, reported in 1980 that only 4 and 5 percent of the total available funds under negotiated tuition aid programs were used by employees. The American Society for Training and Development's numbers on utilization of tuition aid are higher, but they, too, indicate that employees are not taking adequate advantage of the opportunities the funds offer.

Among the explanations for this under-utilization is the uncertainty on the part of employers of their tax liabilities for such support. Employers understand in increasing numbers the absolute necessity of continually upgrading, retraining, and cross-training their workforces. They must provide encouragement for training if their firms are to keep pace with the rapid technological changes in the workplace, if they are to improve their productivity, if they are, in fact, to ensure the health and growth of their enterprises.

The alternatives to employer-supported, employee training are unacceptable. One alternative is to raid other firms for the employees required. Raiding has been a popular tactic of some firms, but they have learned that such a approach can run them out of business. To lure an employee from another firm, a higher salary must be offered. With a succession of such raids, the cost of skilled employees escalates to such a point that the cost of doing business increases, the cost to consumers of products and services increases, and the general competitiveness of the firm with like companies in other countries is weakened. A result of wage escalation, as we have seen in the last few years, is that American jobs are exported to other countries. Examples include the recent decision of Atari to move part of its production operation abroad. Other electronic and manufacturing firms have set up plants in Mexico. Another alternative to industry-supported training is for companies to employ less capable, less well-trained personnel. Some effects of this approach include: low productivity, low quality control, less consumer demand, lower company profits, and eventually, a less vital firm whose diminished operation affects the local economy.

Mr. Chairman, the need for employee training, upgrading, and cross-training is not a momentary aberration in the general flow of business and the economy. The need will be obvious, and will grow even more, for the forseeable future. For example, when it once took 15 years on average to translate technology innovation to practical applications in industry, experts project that it now takes three to four years. The introduction of new technology is always accompanied by a need to train workers to handle it. Further, last year the Urban Institute reported on a study that found that over a five year period, nearly 10 percent of the labor force underwent one or more changes in machine technology, and that another 12 percent experienced a machine change as a result of taking a new job. This study concludes that technological advances changed 2 to 3 percent of all jobs annually, a rate that means 1.5 to 2 million workers were affected annually by these innovations.

One of the effects of this rapid change, Mr. Chairman, is captured in a recent CBO report. It states that: "The proliferation of microelectronic technology could cause the loss of three million jobs by the end of the decade—or 15 percent of the current manufacturing workforce." Unless an assortment of training programs is encouraged by federal legislation, the already distressing number of workers in the ranks of the "dislocated" will expand even more.

Also, it should be noted that 90 percent of the present workforce will be part of the workforce at the end of this decade; and, by the year 2000, 75 percent of the present workforce will still be working. There are important numbers provided by Pat Choate of TRW, Inc., for they underscore the importance of training programs in industry. The skills the workforce has not been adequate even three or four years down the road; workers will need to be trained, retrained and retrained several times over during the remainder of this century if they are to hold their jobs and if the industries are to grow.

The private sector recognizes the need to invest in human resource development. In fact, it has been making an impressive contribution to it. The American Society for Training and Development (ASTD) estimates that the private sector invests from $30 to $40 billion a year on such programs. Many of the larger firms conduct their own programs and have in their administrative structures professional personnel who are responsbile for determining needs and providing the appropriate training programs. These firms also take advantage of the already-existing education and training networks to complement their activities. Through contractual agreements with these institutions, the firms are able to arrange for tailored programs that meet their specific needs.

The bill would also provide incentives for medium-sized and smaller firms to invest in employee training. These firms have significant needs for employee training. In fact, a majority of the new jobs in this country are created by newer and smaller firms—ones that employ 500 or fewer persons. As a group they are most responsible for the development and introduction of new technology. As a result their need for trained employees and for retraining programs is crucial to their success. S. 249 could stimulate them to make investments in employee training that would help ensure their longevity.

Mr. Chairman, in summary, there are many good reasons why S. 249 ought to receive a favorable review by this Subcommittee. They include:

It eliminates the disincentives to employee self-improvement through education and training that existed prior to 1978 when Section 127 was added temporarily to the Internal Revenue Code. And it removes the discriminatory nature of tuition aid assistance programs that characterized their usages prior to 1978.

It offers an incentive to small, medium and large firms, as well as federal, state and local governments and nonprofit organizations to offer tuition assistance to employees.

It encourages employees, in all ranks and positions, to improve their skills and the quality of their lives.

It assists public and private organizations to improve the productivity of their operations and thus the quality of their products and services.

It induces the public and private sectors to take advantages of the significant education and training networks already existing in this country.

It underscores the importance of employer investment in workforce proficiency as a vital means of improving the national economy.

Thank you, Mr. Chairman, for the opportunity to express AACJC's views on this important legislation. This statement is made in association with the American Council on Education.

Senator PACKWOOD. Dale, I have no questions. I have seldom had such a panel that I was more sympathetic with.

I really think Treasury, when the last analysis comes, will not strongly fight this. We go through hearings like this about every 2 or 3 weeks on minor bills, and Treasury is opposed to all of them. [Laughter.]

It is just endemic. They are opposed to anything that is going to cost any money at all, despite the fact that we are cutting down Government funds for similar programs. This is a much cheaper way to achieve the same goal than for the Government to try to finance them.

I think we will get it passed. Treasury has one fear about the addition of the words "spouses or dependents." They seem to think this is a loophole that is going to cause all of you to send all of the children of all of the employees to Harvard. Clearly it was not designed for that. It was designed for the possibility that a spouse might want to upgrade himself or herself, and you might find that worthwhile for employer relations. It clearly was not designed to supplement all of the aid to higher education that the Government might otherwise provide.

Thank you very much. I have no other questions.

Next we will move on to S. 825. First we have a panel of John Heilman, Steven Dawson, David Goldstein, and Donald Alexander.

Good morning, Don.

Mr. ALEXANDER. Good morning, Mr. Chairman.

Senator PACKWOOD. Are you going to speak on behalf of the whole panel?

Mr. ALEXANDER. No; the panel is going to talk individually, sir, and I think I will let them introduce themselves then.

Senator PACKWOOD. All right.

[Mr. Alexander's statement follows:]

STATEMENT OF DONALD C. ALEXANDER

I am Donald C. Alexander, a partner in the law firm of Morgan, Lewis and Bockius, Washington, D.C. I am testifying today on behalf of the Disabled American Veterans and other organizations which would be assisted by passage of S. 825. I appreciate the opportunity to testify on S. 825 and wish to commend Chairman Packwood and Senators Bentsen and Wallop for their concern about a problem which is causing increasing difficulties for tax-exempt organizations.

The Internal Revenue Code grants exemptions from federal taxes to nonprofit organizations dedicated to providing a wide variety of educational, charitable, civic and other services designed to promote the general welfare. However, exemption from federal taxes applies only to income generated from activities which are substantially related to the organizations' exempt functions. Under sections 511-513 of the Code, a tax is imposed on the unrelated business income of exempt organizations. This tax is intended to prevent such organizations from exploiting their exemption to carry on business operations in competition with commercial organizations. The tax is imposed, at regular corporate rates, on the gross income derived by an exempt organization from any unrelated trade or business, less deductions directly connected with that activity.

An unrelated trade or business is defined as any trade or business which is regularly carried on, the conduct of which is not substantially related to an organization's exempt function (apart from the need to raise money). If such a trade or business is substantially related to the organization's exempt function, the tax on unrelated business income does not apply. To be substantially related to the exempt function of an organization, an activity must have a substantial causal relationship to the achievement of the exempt purpose.

In 1981 the Court of Claims held that rentals received by the DAV from renting its names on its mailing lists to other organizations and entities were unrelated business income. In a private letter ruling later addressed to the DAV, the Internal Revenue Service held that "the exchange of mailing lists should be treated the same as cash rentals." The Service added: "The fact that no money is changing hands on straight exchanges does not mean that there is no unrelated business taxable income."

The adverse letter ruling to the DAV is contrary to certain other private rulings, LTR 8101002, LTR 8127019 and LTR 8128004, holding that exchanges of mailing lists with other exempt organizations, without more, does not result in unrelated business income.

Thus, the Court of Claims considers receipts from the rental of mailing lists to be unrelated business income and the Internal Revenue Service has taken opposite stands on whether exchanges of mailing lists create unrelated business income. If an exchange is not "even", i.e., an organization which is a party to the exchange provides, or has an obligation to provide, additional consideration, then presumably the entire exchange is tainted in IRS' view and the entire "gain" becomes unrelated business income.[1] Clearly, charities cannot rely upon the largess of the Internal Revenue Service to protect them against the charge of unrelated business income upon the exchange of mailing lists. Instead, Congressional action is necessary to protect the right of charitable organizations to maintain their mailing lists through exchanges and rentals.

Exempt organizations engage in exchanges to replace names lost through attrition. Without these activities, mailing lists would be depleted quickly. Donor and membership lists are one of the primary tools available to exempt organizations to fulfill their exempt functions. As such, they are substantially related to that exempt function. Rentals are substitutes for exchanges, designed to fulfill the same end and used primarily when exchanges are not feasible.

The attempt by IRS now to recharacterize list exchanges and rentals as generating taxable unrelated business income comes at a time when the private nonprofit sector is particularly hard-pressed. The Administration's commitment to reducing federal involvement in many areas where private nonprofit organizations are active has resulted in cuts in a variety of social programs and levels of service. There is a double impact on private nonprofit organizations: the demand for their services is increased and the revenues to meet those demands are decreased.

Although Congress modified the Administration's proposed cuts for FY 1982 and FY 1983 for programs in areas where the nonprofit organizations are active, an authoritative report[2] has estimated that to date Congress has reduced funding in those areas, after adjusting for inflation, by $13.6 billion in FY 1982 and $13.5 billion in FY 1983, as compared to FY 1980 levels. Based on already-enacted cuts totalling $8.7 billion in FY 1982 and FY 1983 and on the President's proposed budget cuts of $23.1 billion for FY 1984-1986, by FY 1986 the value of federal support to nonprofit organizations will have dropped 22 percent below FY 1980 levels.[3]

To compensate for these reductions and permit the maintenance of 1980 levels of activity, private giving to nonprofit organizations will have to grow 22 percent in

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[1] Retained rights would presumably prevent assignment of any basis to the limited rights transferred in the exchange.

[2] Testimony of Lester M. Salamon, Director, Center for Goverance and Management Research, The Urban Institute, before the Joint Economic Committee (April 14, 1983).

[3] Id. at 14, 17.

1982, 24 percent in 1983, and over 30 percent in 1984, 1985 and 1986.[4] This comes at a time when the services of nonprofit organizations are needed by more and fewer have the resources to give.

S. 825 addresses this problem by making clear that exchanges, rentals and sales of names from donor or membership lists will not generate unrelated business taxable income. This is accomplished by amending section 513 of the Code so that such activities are specifically excluded from the definition of an unrelated trade or business. As currently drafted, the bill is applicable only to organizations exempt under section 501 of the Code, contributions to which are deductible under section 170.

Congress has amended section 513 of the Code on prior occasions to exclude a variety of activities from the definition of trade or business. The activities covered by S. 825 clearly warrant such exclusion. The purpose of name exchanges or rentals is to maintain donor or member lists. Exempt organizations that rent or exchange lists do not engage in these activities in order to compete with commercial operations. Nor do they engage in the activities like those of direct mail commercial organizations. They do not act as clearinghouses for interested parties, nor do they provide services to other parties apart from furnishing the lists. Exempt groups enter into exchange or rental agreements to generate names, and therefore the contributions necessary to continue their vital work.

STATEMENT BY DONALD C. ALEXANDER, ESQ., MORGAN, LEWIS, & BOCKIUS, WASHINGTON, D.C. ON BEHALF OF THE DISABLED AMERICAN VETERANS

Mr. ALEXANDER. I want to pick up on a point you just made, Mr. Chairman.

You pointed out, quite correctly, that at a time when we have less Government support, less Government funding, for essential needs in this country, we have a greater demand upon the private sector. And S. 825 would make a small step, but a highly necessary step, toward making it possible for the private sector to do its job in areas where the demands are increasing and the funds are decreasing.

Now, the Treasury representative in his opposition to S. 825, the Treasury made three points before he finally decided that S. 825 was "close to the line," which presumably means that Treasury's oppposition is not all that strong.

The three points were that exchanging or renting or selling mailing lists is a common commercial practice, that selling doesn't add names, and that exchanges are the equivalent of sales.

First, I think there is considerable confusion on the part of the Treasury. They seem to confuse the mailing lists of the Epilepsy Foundation or the Kidney Fund or the DAV with the mailing lists of Horchow's and Town & Country. Mailing lists are unique. Nonprofit and commercial are entirely different. The mailing list of a charitable organization represents a very valuable asset and a constantly depleting asset of that organization. Using the list is the way they obtain funds from the public, from people who are interested in supporting a charity.

The exchanges of names which actually are exchanges of limited rights in names because one retains the names and gives the other organization a limited right to mail are essential to cope with the ever-present problem of attrition.

When one does rent names, one rents because it is not feasible to exchange. And, as you pointed out, Mr. Chairman, rentals are a totally insignificant portion of the aggregate receipts of a charitable organization—de minimus.

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[4] Id. at 19. These figures, according to The Urban Institute, are based on 1981 levels of activity, the anticipated rate of inflation, and take into account already-enacted budget cuts.

Now, I would like to call first on Dave Goldstein who is comptroller of the Epilepsy Foundation.

Senator PACKWOOD. Mr. Goldstein.

STATEMENT OF DAVID A. GOLDSTEIN, COMPTROLLER, THE EPILEPSY FOUNDATION OF AMERICA, LANDOVER, MD.

Mr. GOLDSTEIN. Good morning, Senator, and thank you for the opportunity to represent the Epilepsy Foundation here this morning.

We are a national office of a voluntary health organization which acts in the interest of people with or affected by epilepsy. We are a 501(c)(3) organization, and contributions to our organization are tax deductible.

Direct mail has been a main source of revenue to EFA since its inception. Part of our direct mail solicitation is certainly public health information. It is an ideal way to get our message to the public so that they are aware that approximately 2 million Americans do have epilepsy or are affected by its condition.

As has been brought out in your statement and that of Mr. Alexander as well, it is essential to maintain our house list at at least the current levels, and to do this we must replace it. Sometimes it is not possible to exchange those lists, but we must offer our list for rent because another organization may not have enough names to provide us.

The taxing of the rental income is burdensome, and it does detract from our ability to provide services. And the taxing of list exchanges would virtually destroy direct mail as a major revenue source. Hence, we urge the passage of Senate bill 825 to exempt these activities from taxation.

Senator PACKWOOD. Thank you.

[Mr. Goldstein's prepared statement follows:]

STATEMENT OF DAVID A. GOLDSTEIN, COMPTROLLER, REPRESENTING THE EPILEPSY FOUNDATION OF AMERICA

SUMMARY

The Epilepsy Foundation of America (EFA) is the national office of a voluntary health organization which acts in the interest of people with or affected by epilepsy.

Direct mail has been the main source of revenue to EPA since its inception.

Public health information is an integral part of the mailings.

It is essential to maintain our "house list" at least at current levels. To do this requires extensive, selective prospect mailing.

The taxing of list rental income is burdensome and detracts from EFA's ability to provide services.

The taxing of list exchanges would virtually destroy direct mail as a major revenue source.

We urge the passage of S. 825 to exempt these activities from taxation.

On behalf of the Epilepsy Foundation of America (EFA) I want to thank you for this opportunity to present our views and concerns about taxing the exchange and rental of donor lists. Direct mail, public information and fundraising are at the heart of our operation. Before discussing the tax issue, however, allow me to describe our organization and its activities.

The Epilspsy Foundation of America, in its present form, was established in 1967 through the merger of several organizations which separately met the needs of people with epilepsy. Again in 1978 we merged with another national organization to form the present Foundation which serves as the national voice of persons with, and affected by, epilepsy.

At the state and local levels, 90 organizations affiliated with EFA provide information and referral, counseling, and training and employment services for people with epilepsy. They also provide public education about epilepsy.

Public education is among the primary activities of EFA at the national level as well. Public misconceptions about epilepsy and people with epilepsy can be as severe a handicap as the condition itself. Many employers refuse to hire perfectly competent and capable people because of their epilepsy. Some young people ostracize and cruelly berate their peers who have epilepsey, and families and acquaintances, even in 1983, disavow relationships with people with epilepsy. EFA is teaching the public that epilepsy is a neurological disorder which affects one in every one hundred Americans, and that in most cases it can be controlled with proper medication. Furthermore, people with epilepsy can lead normal, active lives. After their seizures are controlled the main thing they need is understanding and acceptance.

The aim of EFA's national public service campaign for 1982 was to focus on the degree to which epilepsy is being overcome today—the intent being to fight continuing public misunderstanding of the condition. The television message showed a man climbing a mountain, and metaphorically overcoming epilepsy's problems with modern treatment. The radio campaign features interviews with great historical personages of the past believed to have had epilepsy and contrasting the lack of care in the past with successful care today. We also send over 10 million pieces of mail annually to inform people about epilepsy.

In addition to public education, EFA promotes and supports research into the causes and treatment of epilepsy. In 1982, we awarded 17 research grants from a field of 83 applicants. In addition, 4 medical student fellowships were awarded. We made known to physicians and to the public the available treatments for and other information about epilepsy. The National Epilepsy Library and Resource Center (NELRC) aids people around the country by identifying, collecting and disseminating research findings, program practices information about the condition and about local resources, and about other developments on epilepsy. An in-house data base has been established to this end, including both bibliographic and referreal source entries, and is available to the public upon request. After one of development, the bibliographic data base contains over 1,200 entries and the resource data base includes over 1,000 entries. Those who contact the NELRC have access to the in-house data base with the additional service of searches on other related data bases. The Information and Referral Unit, a component of NELRC, utilizes the data base to respond to approximately 20,000 writtten and phone inquiries per year. We also operate a Training and Placement service funded by the Job Training and Partnership Act. The program services 13 cities and over 5,000 people have been placed in unsubsidized employment.

In order to finance these programs for people with epilepsy, EFA raiseed $5.25 million in 1982. Of this amount, $3.5 million or two-thirds of the total was raised through the mail. Since a significant part of our public education and fund raising activities is concucted through the mail, it should be abundantly clear that maintaining an up-to-date and reasonably targeted mailing list is an integral part of our operation. It is not in any way an unrelated business activity.

Let me note that epilepsy is not an easy cause for fundraising. It is not a "killer disease" nor is it disfiguring. It does not tug at the heart strings like so many other conditions and diseases. On the contrary, many people are put off by the thought of epilepsy and they do not want to be associated with it. Yet over 2 million Americans have epilepsy and they and their families need services. Through the mail, people can contribute to this cause anonymously. To date we have found direct mail to be the most effective means of raising funds.

In order for us to operate with an efficent and effective mailing list, we must add names regularly. Organizations similar to ours must do the same. Therefore, we exchange and occasionally rent lists from one another. EFA maintains a "house list" of over 500,000 names. The "house list" consists of those people who have contributed at least once within the past 2 years. Most of the money we raise comes from donations made by people on the "house list" as they continue to provide support. There is, however, some annual attrition in the "house list." People move, marry and change names, stop contributing or die. In order for us to maintain a constant funding base of over 500,000 names, we must constantly seek new donors. With a "house list" of over 500,000 and an attrition rate of about 10%, we must add at least 50,000 new names every year. To maintain our "house list" and achieve the goal of our direct mail activities of public education and fundraising we can use telephone directories and send our materials randomly or we can rent and exchange lists with similar organizations. Experience has taught us that the telephone book-random mailing could lead to ruin. Public education could be achieved temporarily, but the net financial loss could destroy the organization. Too few of the recipients of our materials would respond with a donation to defray the cost of the mailing, making our efforts counterproductive. By using mailing lists from other charitable nonprofit organizations we are able to target our mail to people who have already indicated an interest in health and human services. These people are far more apt to read our material and make a donation.

We have determined that with the cost of material and postage and the average size of a direct mail donation to EFA, we must achieve at least a 5 percent response rate to these mailings in order to break even. The telephone book approach brings a miniscule response rate. Carefully selected exchanged or rented lists tend to generate a 5 percent to 7½ percent response rate. Those who respond are added to our "house list" because we have learned that people who give once are apt to give repeatedly. The rate of return on subsequent mailings to the "house list" is enough to help finance the fine activities of the organization which I discussed previously.

Let me make an important point about the exchange and rental of lists among nonprofit organizations. We and our colleagues make very limited use of the lists we acquire. We are entitled to use an exchanged/rented list for a specific mail date and for a single mailing. Only people who contribute are added to our "house list." Furthermore, during the time that our list is being used by another organization, we are honor bound not to mail to people on that list. There is a strict ethical code affecting the exchange and rental of lists and we abide by the rules.

Direct mail for the dissemination of information about epilepsy and for solicitations of contributions to EFA is an integral and fundamental part of our organization. It places printed information about the condition in millions of homes, and it enables people to contribute anonymously to a cause for which they have a concern and interest. Maintenance of a list of people who are interested and willing to contribute is the lifeblood of the organization. Rental and exchange of lists with similar organizations is the only way we can effectively and efficiently reach new contributors. The tax on the rental of our mailing lists is burdensome and inappropriate. The money we pay in taxes reduces our ability to provide services, and it is inappropriate because it is a tax on a fundamental part of the operation of an otherwise tax exempt charitable organization. It should not be considered to be an unrelated business taxable income.

The prospect of a tax on the exchange of lists is not only inappropriate and burdensome, it would be disastrous. It could undermine the viability of our direct mail operation to the point that we might have abandon it with no place to go. The very existence of the Epilepsy Foundation of America would be threatened. For these reasons, we urge you to adopt S. 825.

Again, I want to thank you for this opportunity to testify, and I will be happy to respond to your questions.

Mr. ALEXANDER. Now, Steven Dawson, who is executive assistant of the American Kidney Fund.

Senator PACKWOOD. Mr. Dawson?

STATEMENT OF STEVEN DAWSON, EXECUTIVE ASSISTANT, AMERICAN KIDNEY FUND

Mr. DAWSON. Thank you, Senator Packwood.

I would like to summarize my remarks into three statements before I get to the body of my text.

The American Kidney Fund is a 501(c)(3) organization. We derive 90 percent of our revenues through direct mail.

As you know, the intent of Congress in passing the 1950 unrelated business income provisions was to prevent unfair competition with the tax sector.

We feel that organizations that sell, rent, and exchange their own mailing lists do not compete with commercial mail houses, therefore we feel that we should be exempt from the unrelated business income tax.

The American Kidney Fund, as I said, is a 501(c)(3) nonprofit organization. We provide services to the victims of kidney disease. Our primary programs are to provide financial assistance to needy kidney patients. We help with the cost of their treatment-related necessities that aren't covered by any other source, including medicare and the State renal program. Through these services we feel that we are truly the safety net for this very special segment of the American population.

Last year we provided financial assistance to over 9,000 kidney patients, which translates to approximately 12 percent of the total ESRD population in the United States. Through other programs of kidney donor development, public education, and research, over 1 million Americans have benefited.

The American Kidney Fund receives no direct Government funding from the State or Federal levels. We rely solely upon private contributions to maintain our programs. As I said, in 1982 we raised 90 percent of our revenues through direct mail solicitations.

In order for us to maintain a list of viable contributors, we must continually exchange and rent lists from other 501(c)(3) health and welfare organizations that use direct mail. As a matter of fact, the American Kidney Fund is in existence today only because we were able to rent lists when we were first getting started.

Maintaining a good list of donors is the lifeblood of our organization. If the IRS succeeds in their contention that the exchange of names constitutes a taxable transaction for 501(c)(3)'s, most charitable organizations will refuse to exchange their lists; therefore, we will not be able to generate any revenue. Of course, this will result in a grave hardship for us and the many kidney patients that we assist.

The taxation of the rental and exchange of mailing lists will also present us with two additional problems. In addition to depriving needy kidney patients of our vital services, it is going to increase our fundraising and administrative costs to the point where we will not be allowed to solicit funds through fundraising programs in States that impose restrictions on these costs. One program that you are probably familiar with is the Vermont Federal campaign which sets a 25-percent limit on those costs.

Typically, the cost ratios are limited to 25 to 35 percent on fundraising and administrative costs. And of course, if we are not able to raise funds through these particular vehicles, we simply will not be able to exist.

The American Kidney Fund is not engaged in any commercial ventures. We feel it is unfair for us to be categorized with the for-profit businesses. We have grave concerns about how IRS is going to assess the value of mailing lists. It appears to us that any value that the IRS places on the value of a mailing list will be completely arbitrary, since charitable mailing lists aren't commercially traded.

I am also concerned about the perceptions that our contributors are going to have when they know that their contributions are being used to pay the unrelated business income tax. While there may be some abuses, it is certainly not true in our case. Of course, the purpose for our exchanging our list is to further our charitable cause.

The American Kidney Fund has responded to the President's call for the private sector to provide more health and welfare services. We have already had to cut our services to pay the additional increases in postage rates for nonprofits over the last 2 years.

So that we may continue to provide our lifesaving services, we urge you to endorse S. 825.

Thank you.

[Mr. Dawson's prepared statement follows:]

AMERICAN KIDNEY FUND'S TESTIMONY ON S. 825

Members of the Committee and guests, my name is Steve Dawson. I am the Executive Assistant of the American Kidney Fund.

The American Kidney Fund is a 501(c)(3) non-profit organization which provides services to the victims of kidney disease. Our primary programs provide direct financial assistance to needy kidney patients. We help with the cost of their treatment-related necessities not covered by any other source, including Medicare and state renal programs. Through these services we are truly the safety net for a very special segment of the American population. Last year we provided financial assistance to about 9,000 kidney patients, or approximately 12% of the End Stage Renal Disease population. Through our other programs of kidney donor development, public education, and research, over one million Americans have benefited.

American Kidney Fund receives NO direct government funding from the federal or state levels. We rely solely on private contributions. We raised 90% of our total revenues from direct mail solicitations. In order for us to maintain a viable list of contributors, we exchange our list and rent mailing lists from other 501(c)(3) health and welfare charities that use direct mail. American Kidney Fund is in existence today because we were able to rent a mailing list from another charitable organization. At that time, American Kidney Fund was starting out and had no mailing list to exchange.

Maintaining a good list of donors is the lifeblood of our organization. If the I.R.S. succeeds with their contention that an exchange of names constitutes a taxable transaction for 501(c)(3) non-profit organizations, most charitable organizations will refuse to exchange lists. Therefore, this will not generate any revenue. Of course, this will result in a grave hardship for us and the possible demise, or at least cause tremendous scaling back, of our services.

The taxation on the exchange or rental of charitable mailing lists will result in a dramatic increase in our fund raising and administrative expenses. This increase in expenses would have two adverse effects on American Kidney Fund and our ability to serve kidney patients. First, it would deprive needy kidney patients of the vital services we provide to them. Second, it would increase our fund raising and administrative costs ratio to the point where we will not be able to solicit funds in states and fund raising programs that impose restrictions on these cost ratios. Typically, these cost ratio limits range from 25% to 35% on fund raising and administrative expenses. If we are unable to raise funds in the states by direct mail solicitation and through these other programs, American Kidney Fund will simply cease to exist and thousands of needy kidney patients again slip through the safety net.

American Kidney Fund is not engaged in commercial ventures. I feel it is unfair to be categorized and taxed as a for-profit business. I have grave concerns as to the assessment of the value of given mailing list. It appears to me that any value the I.R.S. places on a mailing list would be completely arbitrary, since charitable mailing lists are not commercially traded. I am also concerned about the perceptions that our contributors will have knowing that their donations are being used to pay the unrelated business income tax. While there may be some abuses, it is certainly not true in our case. Our purpose for exchanging lists is to further charitable cause.

American Kidney has responded to the President's call for the private sector to provide more health and welfare services in light of government cutbacks. We have already had to cut our services to pay for the increases in the non-profit postage rates over the last two years. So that we may continue to provide these life-saving services, I urge you to endorse S. 825.

Mr. ALEXANDER. And now, Rick Heilman, who is national legislative director of the Disabled American Veterans.

Senator PACKWOOD. Mr. Heilman?

Mr. HEILMAN. Yes, sir.

STATEMENT OF JOHN F. HEILMAN, NATIONAL LEGISLATIVE DIRECTOR, DISABLED AMERICAN VETERANS, WASHINGTON, D.C.

Mr. HEILMAN. Good morning, Mr. Chairman.

I will just summarize my testimony and try not to be repetitive. I do want to make a few points.

No. 1, list rental exchange activity on the part of the DAV is absolutely essential if in fact our organization is to be able to continue to provide the beneficial programs that we do for disabled veterans and veterans generally.

There is an attrition rate, as has been mentioned earlier, that impacts on our list annually, and if that were not negated in a very short period of time, 2 or 3 years, our donor list would in fact disappear. So we would definitely disagree with Assistant Secretary McKee in stating that the list rental exchange activity has no substantial relationship to the charitable purposes for which we have our tax exemption.

Second, I want to underscore that although we do derive income in this list rental exchange activity, that is not the purpose for which it is engaged in. And as a matter of fact, that particular activity does not give the DAV a profit.

To illustrate, in 1982 the income received by DAV through renting its names was $1.2 million. During that same year the DAV received some 15 million names through renting and exchanging with other organizations. We mailed 11 million of those 15 million, attempting to identify potential contributors and put them on our donor list.

The cost of mailing those 11 million names was $4 million, so clearly that activity by itself does not gain income for the DAV. In fact, it is not profitable. The main reason for doing it, of course, is to maintain the validity of the donor list.

Finally, I also wanted to point out that the programs of organizations such as the DAV provide a beneficial service to many deserving categories of Americans. As has been pointed out, some of these programs are similar to or duplicate efforts on the part of the Federal Government, and to inhibit organizations such as the DAV from continuing their programs or expanding their programs is clearly counterproductive to the Federal Government and to the American taxpayer.

Essentially, that is the basis for our support for the bill, Senator. We do appreciate your earlier remarks this morning indicating that you think it is a good bill, also.

Thank you.

Senator PACKWOOD. Thank you.

[Mr. Heilman's prepared statement follows:]

STATEMENT OF JOHN F. HEILMAN

Mr. Chairman and members of the Subcommittee:

On behalf of the over three-quarters of a million members of the Disabled American Veterans, may I say that we deeply appreciate the opportunity to present our views on S. 825, a measure introduced in the Senate by Senator Bentsen and cosponsored by Senator Wallop, which proposes to amend the Internal Revenue Code of 1954 with respect to the Unrelated Business Taxable Income of certain nonprofit charitable organizations.

Mr. Chairman, the Disabled American Veterans supports Congressional passage of S. 825, which Senators Bentsen and Wallop were so kind to introduce at our request. Before commenting upon the bill itself and stating why we believe it merits favorable action, I believe it is pertinent to provide the Subcommittee with a few words of background information concerning our organization.

BACKGROUND INFORMATION ON THE DISABLED AMERICAN VETERANS

The Disabled American Veterans (DAV) was formed by a group of disabled World War I veterans in 1920. It was chartered by act of Congress on June 17, 1932 and was incorporated in the state of Ohio in 1938. The DAV has been granted an exemption from taxation under Section 501(c)(4) of Title 26, United States Code, as amended, and its principal office is located at 3725 Alexandria Pike, Cold Spring, Kentucky.

The purposes of the DAV, as set forth in its Constitution and By-Laws, are to uphold and maintain the Constitution and laws of the United States; to realize the true American ideals and aims for which those eligible to membership fought; and to advance the interests and work for the betterment of all those who have become wounded, injured and otherwise disabled as a result of wartime military service in our nation's Armed Forces, as well as their dependents and survivors.

Eligibility for membership in the DAV is restricted to veterans of honorable wartime military service who have incurred a service-related wound, injury or disease. At present, the national membership of the DAV is 765,634, with a ladies' Auxiliary of some 97,436.

The most important program of the DAV is its National Service Program. This Program involves employment of some 263 National Service Officers (NSOs) who are also service-connected disabled veterans. These NSOs are recognized by Congress as "attorneys-in-fact" and, as such, are authorized to represent veterans (both disabled and non-disabled), their dependents and survivors before the Veterans Administration's Rating Boards in determining compensation, pension, hospitalization and other benefit entitlement. This representation is offered free of charge to all veterans, their dependents and survivors as the expenses of the National Service Program are paid for by funds raised by the DAV. The National Service Program has offices located in every Veterans Administration Regional or District Office in the United States and DAV NSOs regularly visit every VA Hospital.

In addition, the DAV has a larger staff in Washington, D.C. to handle the appeals of veterans, their dependents and survivors who have received adverse benefit determinations by VA agencies of local jurisdiction.

The DAC also maintains other programs which provide services and benefits to its membership and/or the veteran community at large. Among these programs are: a National Employment Program, a National Legislative Program, a fleet of Field Service Units which seek out veterans who do not have access to VA Regional Offices, participation in the Veterans Administration's Volunteer Services Program (VAVS), and Educational Scholarship Program for the children of needy disabled veterans and programs of financial relief for victims of natural disasters and those in need of "emergency" assistance.

SOURCE OF DAV REVENUE

Mr. Chairman, the DAV's primary source of revenue to conduct its tax-exempt operations is realized through an entirely "in-house" administration of direct solicitations to the general public. Contributions to the DAV are deductible pursuant to the provisions of Section 170 of Title 26, U.S.C.

The DAV maintains a "donor list" and conducts semi-annual mailing solicitations from that list (due to increased program costs, in 1983 the DAV will conduct three solicitations). Public support is broad based in the form of relatively small individual contributions—the average contribution currently running at approximately $4.

DONOR LIST MAINTENANCE

The size of the DAV donor list in recent years has been in the area of 6 million and declining slightly (5.3 million in the spring of 1982). Periodically, the DAV removes the names of individuals from its list who:

1. Are deceased,
2. Have moved with no forwarding address,
3. Have not responded to recent solicitations, and
4. Have requested not to be solicited.

This donor list "attrition" occurs at the rate of 12 percent per year, translating into an annual loss of over 700,000 names from the list. These names have to be replaced. If replacement did not occur, contributions would drop dramatically and program operations would be placed in serious jeopardy. Therefore, donor list maintenance, i.e., name acquisition activity, must be engaged in by the DAV. Name acquisition is the only way to maintain viability of the donor list.

Name acquisition is achieved by the DAV through the rental and exchange of names from its list to and with other groups or organizations. The DAV has been engaged in this list acquisition activity since the early 1960s. The DAV does not sell its names.

As stated, the DAV rents and exchanges names from its donor list primarily to and with other tax-exempt organizations but also, to a limited degree, to and with the private sector. During the last ten years, our rental/exchange activity has been 80 to 90 percent with other 501 organizations and 10 to 20 percent with commercial groups. In 1982, the ratio was 85 percent 501 organizations, 15 percent to commercial organizations.

I wish to underscore, Mr. Chairman, that the DAV solicitation operation is entirely "in-house" and, through we do have the capability of providing complete mailing services to other organizations, to avoid direct competition with commercial mailing organizations, the DAV does not make such mailing services available to any group.

TAX STATUS OF INCOME RECEIVED FROM DONOR LIST RENTAL/EXCHANGE

Mr. Chairman, under present law (Sections 511-13, Title 26, U.S.C.), organizations such as the DAV, though generally tax-exempt as 501 organizations, are subject to tax with regard to income received from unrelated trade or business activity (UBTI).

Section 513 of the IRS Code defines and unrelated trade or business activity as: "Any trade or business the conduct of which *is not substantially related* (aside from the need of such organization for income or funds or the use it makes of the profit derived) to the exercise or performance by such organization or its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 501" (Emphasis added.)

In 1974, the Internal Revenue Service determined that DAV's income from donor list rental activity is subject to taxation as UBTI. In response to this determination, the DAV initiated legal action asserting, among other things, that its income from list rental activity should not be regarded as UBTI. A decision was rendered on May 20, 1981 unfavorable to the DAV (*Disabled American Veterans* vs. *United States* 650F. 2d 1178[Ct. Cls. 1981]). Furthermore, by means of a 1981 ruling, IRS has expanded this court decision to also encompass DAV's list exchange and likewise render this activity subject to UBTI.

Mr. Chairman, the DAV believes these decisions are not in keeping with the stated intent of Congress when it placed Sections 511-13 in the statute books, As we understand it, the unrelated business income tax was imposed to prevent tax-exempt organizations from conducting business operations with an unfair competitive edge over taxable businesses engaged in conducting similar activity in the private sector.

We do not believe that our list rental/exchange activity falls within such a category. We do believe that it is very much related to the performance of the charitable programs which constitute the basis for our 501 exemption.

S. 825

In view of the above, Mr. Chairman, the DAV is seeking Congressional relief from the Court of Claims Decision and IRS Ruling and the pending measure, S. 825, would extend that relief.

Briefly, the measure provides that in cases of nonprofit "501" organizations, contributions to which are deductible under Section 170 (of the IRS Code), the term "trade or business" does not include that which consists of exchanging, renting or selling names and addresses of donors to, or members of, such organizations.

I do wish to point out, Mr. Chairman, that such a modification of law would not be precedental in nature. An example of recent, similar Congressional intervention on behalf of charitable organization is seen in Public Law 95-502 (enacted October 21, 1978) where income received through the conducting of "bingo" games by certain nonprofit groups was determined not to be in competition with the private sector and therefore not subject to UBTI.

Also, it should be noted that should 501 organizations be granted the tax relief sought, the annual decrease in federal tax revenues would be quite small.

In April of last year, the DAV asked six separate direct mail industry spokesmen to provide estimates on the net mailing list rental revenues generated by nonprofit charities each year (excluding the DAV). One spokesman provided an estimate of

$18.5 million (which we consider to be high). The other five provided estimates of $6 million or less. Obviously, the tax liability on this income would be quite small.

Against this relatively minor figure we ask the Subcommittee to consider the services rendered and benefits offered to vast categories of deserving and needy people by charitable organizations. Some groups—and the DAV is a prime example—actually save our government and the American taxpayer millions of dollars of expenditures through the performance of programs which supplement and/or take the place of similar federal efforts.

For example, those 263 DAV claims representatives (NSOs) mentioned earlier perform the exact same services as do contact representatives and benefits counselors employed by the Veterans Administration. The VA has informed us that should they be required to enlarge their staff by the same number of NOSs and supportive clerical personnel, an additional annual expenditure of $7.7 million would be required (in the VA budget).

Also, during calendar year 1982 the DAV provided:

1. Almost one half million manhours of voluntary service and $.4 million in monetary contributions to VA hospitals through the VAVS Program.
2. Over $470,000 in college scholarship assistance to the children of needy disabled veterans.
3. Over $750,000 in direct monetary assistance to veterans in financially precarious situations.
4. Over $80,000 in direct monetary assistance to veterans who fell victim to "natural disasters."

In summation, Mr. Chairman, the exchanging and renting of donor list names by nonprofit groups is not competitive with the private sector. It is engaged in for a reason substantially related to the charitable works of 501 organizations. And, finally, while exempting such revenue from taxation would have no significant impact on federal revenues, it would encourage the continued existence and expansion of many beneficial programs and services of charitable organizations.

We therefore respectfully urge the Subcommittee to take favorable action on S. 825.

This completes my statement, Mr. Chairman. Again, on behalf of the DAV, I wish to thank you and the members of the Subcommittee for the opportunity to present our views on this most important subject.

Senator PACKWOOD. Why don't you go ahead, Mr. Lehrfeld, and then I will have some questions. I know you were going to testify separately, but I've got you up there, and I think the questions I have for you are identical to the ones I have for them.

Mr. LEHRFELD. Well, I am sorry if I interrupted the panel, but the list posted outside the door indicated just five witnesses.

Senator PACKWOOD. Oh, no, that's quite all right.

STATEMENT OF WILLIAM J. LEHRFELD, ESQ., LEHRFELD & HENZKE, WASHINGTON, D.C., ON BEHALF OF AMVETS AND AMVETS NATIONAL SERVICE FOUNDATION, WASHINGTON, D.C.

Mr. LEHRFELD. My name is William Lehrfeld, and I serve as tax counsel for AMVETS.

I want to address this outside of the prepared testimony, because the Treasury made some remarks I don't think are technically accurate.

AMVETS has thrift stores, so that, for example, if you, Senator Packwood, gave us some clothing, we could sell that clothing and earn, as we did last year, some $700,000 in net revenues.

If, however, you gave us a check for the value of what you see our services might be and, as all checks do, have your name and address on the top of that check, we can sell your clothes tax free but the IRS is saying we can't sell your name tax free.

Senator PACKWOOD. Do you mean to say, at the moment the IRS says that the thrift shop is not unrelated income?

Mr. LEHRFELD. Correct.

Senator PACKWOOD. That's interesting. That, frankly, seems to me more unrelated than the mailing list.

Mr. LEHRFELD. Well, I think the Congress in 1950 possibly thought so, too, and therefore, provided a specific exemption in the code (IRC 513(a)(3)) for the sale of donated merchandise. And it is just a very short step from saying that a person's name, since it is a property right, is also merchandise; and if that person donates his money he is also donating his name. So that if we sell a name, there is no tax distinction. Perhaps a distinction in form but not a distinction in substance, between the sale of that name and, for example, the sale of donated property such as a bicycle.

Second, the Service and the Treasury Department have approved the concept in the unrelated business income tax area of permitting the sale of the so-called natural byproduct of an exempt function.

For example, if you have Oregon State University with a dairy herd, and you are teaching young people how to become future farmers, you obviously have to milk the cows. The Treasury Department will permit you to sell that milk tax free and not realize unrelated business income, because the milk is a natural byproduct of the exempt function of teaching.

If we have a thrift store with a disabled veteran in there, and instead of receiving a donated toaster which he will repair we go and buy something from a junk store and he repairs that donated toaster, and then we sell it in our thrift store, again, because we are teaching that veteran a skill, the sale of that byproduct is not unrelated business income.

So the natural byproduct example in the regulations, I think, would extend very easily from a tax policy standpoint to the sale of an individual's name when they make that contribution to us.

Finally, we have to express our bewilderment at the Government—the Treasury Department's, not the Internal Revenue Service—policy on exchanges. We have three private letter rulings right here that hold the exchange of a mailing list is not taxable because it related. It's not generating unrelated business income—and this IRS position is quite apart from the like-kind exchange statute that exists already in the Internal Revenue Code where, if you have productive property, you may exchange that productive property tax free (IRC 1031). These are private letter rulings, even though we can't rely on them, exemplify the Internal Revenue Service's written position that the exchange of a mailing list between nonprofit organizations is not the creation of unrelated business income.

Today we have the Treasury Department, which is the parent of the Internal Revenue Service, apparently indicating that an exchange is creating unrelated income. I think we would like somebody to get their house in order, because it seems to me that the agency that administers the tax laws shouldn't be telling the taxpayers one thing, and then the parent organization which supposedly establishes tax policy telling the public something else. The inconsistency is entirely unacceptable.

Thank you, Senator.

[Mr. Lehrfeld's prepared statement follows:]

PREPARED STATEMENT OF MR. LEHRFELD

A. INTRODUCTION

My name is William J. Lehrfeld of the firm of Lehrfeld & Henzke, Washington, D.C. Our firm represents numerous Sec. 501(c)(3) and Sec. 501(c)(4) organizations which may be affected by this legislation.

The purpose of this written testimony is to set out, for the record, the position of AMVETS, American Veterans of World War II, Korea and Viet Nam, and AMVETS National Services Foundation, on S. 825, amending Sec. 513 of the Internal Revenue Code. Sec. 513 of the Code contains various special exemptions for certain revenues derived by exempt organizations from programs which are offered to the general public, members of the organizations, or students, patients, etc. If an exempt organization described in Sec. 501(c) receives income from its sale or rental of mailing lists of donors or members, such income is now subject to tax according to the Internal Revenue Service. S. 825 would reverse the current administrative position on this matter, which is supported by a U.S. Claims Court decision, thereby enabling veterans' organizations, among others, to protect, as tax free income, monies derived from its sale of donor or member names and addresses.

B. PURPOSES OF AMVETS

AMVETS was originally organized under an Act of Congress (Public Law 216, 80th Congress) for the support and benefit of veterans of World War II. Its membership is now open to veterans of Korea and Viet Nam. The basic purposes of the corporation are (1) to preserve for ourselves and our posterity the great and basic truths and enduring principles upon which this Nation was founded; (2) to maintain a continuing interest in the welfare and rehabilitation of disabled veterans and to establish facilities for the assistance of all veterans and to represent them in their claims before the Veterans Administration and other organizations without charge; (3) to dedicate ourselves to the service and best interests of the community, State and Nation, to the end that our country shall be and remain forever a whole, strong, and free Nation; (4) to aid and encourage the obligation of prejudice, ignorance, and disease, and to encourage universal exercise of the voting franchise, to the end that there shall be elected and maintained in public office men and women who hold such office as a public trust administered in the best interests of all people; (5) to advocate the development and means by which all Americans may become enlightened and informed citizens and thus participate fully in the functions of our democracy; (6) to encourage and support an international organization of all peace loving nations, to the end that not again shall any nation be permitted to breach their national peace; (7) to continue to serve the best interests of our Nation in peace and war.

These noble principles are still carried out in the various activities of AMVETS by its membership.

AMVETS National Service Foundation is the tax exempt, tax deductible arm of AMVETS and has the primary responsibility for raising monies from the general public through direct mail appeals for contributions and through its thrift stores.

C. SUPPORT FOR S. 825

We appear today because of our concern about the privileges and immunities contained in the Internal Revenue Code relating to veterans' organizations. Veterans' organizations are organizations to which contributions are deductible for federal income, estate and gift tax purposes. See, Sec. 170(c)(3), 2055(a)(4) and 2522(a)(4). A veterans organization's ordinary earnings are exempt from federal income tax (IRC Sec. 501(c)(4)) and although subject to the unrelated business income tax, Sec. 501(c)(19) protects certain insurance income derived from its members when set aside for charitable purposes. There is no current exemption from the sale of donor names except as may possibly be accorded Sec. 501(c) organizations by Sec. 513(a)(3), dealing with the sale of donated "merchandise". We support enactment of S. 825 and its treatment of income derived from the sale, rental or exchange of lists of names and addresses of donors and members.

In 1982, the Foundation raised over $3 million in contributions by soliciting the public and raised another $700,000 from its thrift stores. Neither form of revenues is subject to the unrelated business income tax. We have not, however, sold or rented our mailing list in recent years because of our concern over the Internal Revenue Service's position contained in Rev. Rul. 72-431, *infra*.

In order to raise funds to support the activities of AMVETS, the Foundation buys "mailing lists" composed of thousands of names of potential contributors. It must continue to do so since our house list gradually wears out and must be constantly replenished. It also receives names and addresses of prospects through exchanges.

Once an individual on a prospect list makes a contribution to the Foundation, following our solicitation, the donor's name is then placed on our own "house list". The Foundation does not exchange its house list with commerical brokers or agents or with non-charitable organizations. The exchange of donor names is common in the nonprofit community for groups which rely on direct mail for their contributions.

We have not treated our exchange of mailing lists as a taxable event for several reasons including the income tax exemption accorded like kind exchanges of productive property offered by IRC Sec. 1031(a); also, we exchange only with charities which are enhancing the by-product of their exempt function of raising funds. Lastly, we have treated the exchange transaction as a wash because what we receive in value from the other party to the trade equals in value what we give up. One other consideration is the fact that the Internal Revenue Service seems confused on the taxation of exchanges (compare IRS documents 8101002, 8127019 and 8128004 with 8216009). This confusion in the private rulings process indicates they haven't got their house in order on this point. Until the Internal Revenue Service publishes a ruling on exchanges, as it did with the sale of membership listings (REV. Rul. 72-431, C.B. 1972-2, 281), the public cannot rely on either the favorable or adverse private rulings due to Sec. 6110(j)(3) or the Code and is comfortably in the dark.

Enacting S. 825 should nullify the decision rendered in 1981 by the Court of Claims involving the Disabled American Veterans, 650 F.2d 1178 (1981). Although AMVETS' solicitations of gifts from the public and its current exchanges of donor lists are carried out in a different manner than was involved in the *DAV* case, AMVETS is very concerned that the *DAV* case may be construed to mean that all sales, rentals and exchanges of donor lists by charitable organizations will generate unrelated business taxable income. We believe that, not only would this be an overbroad reading of the case,[1] but also that this approach is not justified by a proper construction of the applicable sections of the Internal Revenue Code as originally enacted in 1950 and as extended to veterans' organizations in 1969.

For example, Sec. 513(a)(3) of the Internal Revenue Code states that the term "unrelated trade or business" does not include a trade or business:

"Which is the selling of merchandise substantially all of which has been received by the organization as gifts or contributions."

Thus, a Sec. 501(c)(4) organization's income which is derived from the sale of donated merchandise cannot be categorized as an unrelated business income. Revenues are excluded from tax regardless of the unrelated nature of the income producing activity. It is our belief that the individual names and addresses which, when aggregated, compose AMVETS', and other exempt organizations', "house lists" could well be regarded as contributions or gifts of merchandise from the individual donors within the meaning of Code Sec. 513(a)(3). See, e.g., Gordan, "Right of Property in Name, Personality and History", 55 Northwestern Law Review 553 (1960). As a result, when AMVETS takes the names and addresses of individual donors and formulates them into a computerized mailing list, such a list could be deemed "merchandise" under existing law; the sale of such a list of names should not be generate unrelated business income because of the exception provided by Code Sec. 513(a)(3).

While, to the best of my knowledge, this statutory construction for Sec. 513(a)(3) has never been advanced before the Internal Revenue Service or the courts, I believe that this construction of the term "merchandise" is not at all at odds with the law of personal property; and an individual's name is personal property. *Brown Chemical Company* v. *Meyer*, 139 U.S. 540 (1891). However, S. 825 serves to end any ambiguity in this area by achieving a clear and certain result and, in the interests of avoiding later adminstrative appeals and/or litigation, we would like to express our support for the clarifying amendment to the Internal Revenue Code brought about by the enactment of S. 825.

One other reason supporting enactment of S. 825 also exists under administrative interpretations of the unrelated business income tax as now written. Again, we must stress that our interpretation of Regs. § 1.513-1(d)(2)(ii), Disposition of Product of Exempt Function, has no visibility in the published or private ruling process nor do we know of any argument made in court challenging the taxation of the sale of mailing lists through such regulation. The regulation cited above, exempts from tax, the profitable sale of the natural by-product of an exempt function. As exemplified, the sale of articles made by the handicapped is not taxable to a rehabilitation center since the articles sold result directly from the conduct of a charitable or educational function, i.e., teaching the disadvantaged how to become productive through manufacture or repair of goods. If the rehabilitation center scrapped the manufactured or repaired goods, or gave them away, the training function would continue but possibly be impaired because the trainees would not have a concrete measure of the quality and value of their training when they move on to a commercially productive employment. In our case, the names and addresses of donors are a natural by-product of our fund raising function which is as charitable as the veterans programs we support. See, e.g., *Trinidad* v. *Sagrada Orden*, 263 U.S. 578 (1924). When, and if, the Foundation chooses to sell the names of its donors, we are merely doing something incidental to our exempt function in profitably disposing of an article of property arising from the performance of an exempt function.

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[1] The Court of Claims opinion noted several times that the DAV had presented "no evidence" that their sale of lists was related to their exempt veterans function.

Although the Internal Revenue Service has administratively approved this by-product doctrine even where there is a pervasiveness commercial presence, and probable anti-competitive impact of such "by-product" sales,[2] we would not want to put forward such an argument in light of the sweeping nature of Judge Merow's opinion in the DAV case.

The statutory (Sec. 513(a)(3)) and administrative (Regs. § 1.513-1(d)(2)(ii)) parallels are raised not to suggest that S. 825 is superfluous but to analogize its thrust to current doctrines which are similar in purpose and effect to the bill. The exemption from tax offered by S. 825 fits neatly within other revenue exemption provisions of existing law and is not at all out of harmony with what the Congress has done before or with what the Internal Revenue Service has itself approved in limited instances.

D. CONCLUSION

In closing, let me raise one issue yet undiscussed—the possible revenue loss from this exemption. The tax revenues at stake here are very modest, probably less than $500,000 per year. Since its inception, the unrelated business income tax has not paid the Treasury any real substantial sums of money (see attached chart) and never lived up to the revenue raising estimates published by the Congress in 1950 (see, Aug. 30, 1950 Cong. Rec., p. 13951), even adjusted for inflation. The amount of tax foresworn by enacting this bill will be more than offset by the increased vigor of charitable solicitations which, in turn, will lessen the burdens of government relating to health, welfare and veterans' services. If AMVETS saves $20,000 in tax, that sum is spent directly on veterans' services and the federal fisc suffers no real loss due to our re-investment of the tax savings in the welfare of veterans.

Exempt organizations business income tax[1]

Fiscal year (July 1 to June 30):	
1952	$119,416
1953	116,184
1954	690,000
1955	2,150,000
1956	1,355,000
1957	2,622,000
1958	2,199,000
1959	2,840,000
1960	2,104,000
1961	3,193,000
1962	1,994,000
1963	1,929,000
1964	1,904,000
1965	2,699,000
1966	3,117,000
1967	2,916,000
1968	3,265,000
1969	5,613,000
1970	4,800,000
1971	6,758,000

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[2] An agricultural college can sell milk tax free from its dairy herd maintained to teach students.

Exempt organizations business income tax [1]—Continued

Fiscal year (July 1 to June 30):	
1972	$9,414,000
1973	12,602,000
1974	19,193,000
1975	23,052,000
1976	43,836,000
Transitional quarter (July 1 to June 30)	
Fiscal year (October 1 to September 30):	
1976	4,708,000
1977	34,100,000
1978	35,996,000
1979	38,985,000
1980	33,059,000
1981	40,991,000
1982	64,701,000

[1] Taken from Commissioner of Internal Revenue's Annual Report; Table titled "Internal Revenue Collections by Sources."

Senator **Packwood**. You are all 501(c)(3)'s?

Mr. **Alexander**. No. The DAV is a 501(c)(4), but contributions to the DAV are deductible under section 170.

Senator **Packwood**. By specific statute?

Mr. **Alexander**. Yes.

Senator **Packwood**. Let me ask this: Is there any reason why other 501(c)(4)'s should not be treated as the (c)(3)'s? They all have legitimate purposes—slightly different purposes, but they never would have got their exemptions had they not had what the Government regards as statutorily legitimate purposes.

Now, the League of Women Voters: Is there any reason why they should be treated any differently than a (c)(3) in terms of the rental income of their mailing list?

Mr. **Alexander**. Mr. Chairman, that's obviously a decision for the Congress to make. There are many worthy organizations like the League of Women Voters and others that are (C)(4)'s.

Now, of course (c)(4)'s range the entire gamut of our social and, to some extent, our political life.

The bill last year, introduced primarily on behalf of the Disabled American Veterans, was not limited, as is this year's bill, to organizations to which contributions are deductible under section 170. Some felt a concern about including all of the 501(c) population, which would bring in such things as football leagues, credit unions, and the like, that might not be as deserving as the (c)(4) population and the (c)(3) population. And because of those concerns, this year's bill is a more limited bill, designed to assist in the areas where many perceive the greatest need, but surely not the only need. And you might well consider broadening the bill to include (c)(4)'s.

Senator **Packwood**. I think in fairness it should, because their purposes are as worthy as others. They are different purposes, but we have found them to be worthy. And the real issue involved here is not are (c)(3)'s more worthy than (c)(4)'s, the issue is, is the relatively minor income received from the rental of your mailing lists to be regarded, in essence, as sufficiently related to your main activities that it shouldn't be taxable?

Mr. **Alexander**. Right. And it's a minor matter to the Treasury. To the charities, it is a major problem, and a growing problem now that Treasury has decided the conflict within the Internal Revenue Service on the treatment of exchanges. There are three letter-rulings going one way, but there is a one letter-ruling going the other way. Now that Treasury has spoken, I have no doubt that the IRS will heed that view and go the way of the adverse letter-ruling, which would create a tremendous problem for all nonprofit organizations that try to keep up their mailing lists through exchanges.

Senator **Packwood**. I agree with you totally. I am well familiar with direct mail and the dropoff every year with people who move and letters that are nonreturnable. And if you don't keep your list up to date after about 3 years, you are spending more then on the list than you are getting back from it, and there is a perpetual need to keep it up to date.

Gentlemen, I have no other questions. I think your case is well made. I hope Treasury will come around to seeing that point of view.

Thank you.

Mr. **Alexander**. Thank you, sir.

Mr. **Lehrfeld**. Thank you.

Senator **Packwood**. We are adjourned.

[Whereupon, at 10:43 a.m., the hearing was concluded.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

ACLU

National Headquarters
132 West 43 Street
New York, NY 10036
(212) 944 9800

Norman Dorsen
President

Ira Glasser
Executive Director

Florence B. Isbell
Associate Director

May 31, 1983

The Hon. Bob Packwood, Chairman
Senate Committee on Finance
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

We understand that the Senate Committee on Finance is now considering a bill that would modify IRS rulings that tax-exempt organizations which exchange or rent mailing lists are producing unrelated business income which is subject to taxation.

We strongly support legislation that would prevent the IRS from penalizing tax-exempt organizations that exchange or rent their lists. From our own experience, the IRS' view of list income as unrelated business income is artificial and unrealistic. Most non-profit organizations conduct their membership acquisition programs at a substantial deficit. The list rental and exchange program is part and parcel of that acquisition program and it does not produce income; it simply serves to reduce the deficit. For instance, the ACLU's deficit in its membership acquisition program in 1982 was approximately $250,000. Our list rental income was $43,000. The remaining deficit was about $200,000.

To characterize list rental income as "unrelated business income" is extremely misleading. For us, and for other non-profit organizations, it is taken for granted that list rental is part and parcel of the acquisition program, so much so that in most cases, the list income doesn't even come directly to our organization but goes to our direct mail people who apportion it to list owners to whom we owe money. To separate the larger costs to us of list rental and exchange from the lesser income that this practice produces makes no sense at all.

We have been informed that there is considerable sentiment in the Committee for recommending that tax-deductible organizations (501 C 3s) be exempted from taxes on list rental or exchange, but that tax-exempt organizations that do not qualify for tax deductibility because of their lobbying activities (501 C 4s) should be subject to such taxes. The ACLU is strongly

. . . .

opposed to such an arbitrary and discriminatory distinction. The above analysis applies to 501 C 4s organizations in no way different from its application to 501 C 3s. Nor is the legal distinction between 501 C 3s and 501 C 4s relevant to the reasons why list rental income should not be regarded as unrelated business income.

As a practical matter, this distinction would have no adverse effect on such well-established and affluent organizations like the National Rifle Association, which could easily afford the tax, but it could devastate small cause organizations that are struggling to focus attention on a neglected area -- funding for a particular aspect of the arts, for instance.

Moreover, there is a strong First Amendment component to the exchange aspect of list management that mandates against taxation. That is, many lists are not available through rental, but only through exchange. By taxing the so-called "income" from list exchange, (a purely theoretical "income" since the only "income" is not cash, but a list) it would be economically impossible for many organizations to reach the audience they wish to reach with their message. That message is not merely a plea for funds. It is an explanation of the organization's position on a public policy question and an attempt to persuade the recipient to support it.

This is the highest order of communication protected by the First Amendment and it ought not to be inhibited or penalized by arbitrary taxation.

The ACLU urges you to support the exemption of all non-profit organizations, both tax-deductible and tax-exempt from taxes on list rental and/or exchange.

Sincerely yours,

Ira Glasser

Ira Glasser
Executive Director

AMERICAN COUNCIL ON EDUCATION
Division of Governmental Relations

May 2, 1983

The Honorable Bob Packwood, Chairman
Subcommittee on Taxation and Debt Management
Committee on Finance
United States Senate
Washington, DC 20510

Re: Subcommittee Hearings on S. 249
Held April 29, 1983

Dear Mr. Chairman:

On behalf of the American Council on Education, an association representing over 1,500 colleges, universities, and other organizations in higher education, and the associations listed below, we would like to express our strong support for S. 249, the Employee Educational Assistance Extension Act. We also request that our comments be included in the printed record of the Subcommittee's hearings on this legislation held on April 29, 1983.

S. 249 would make permanent tax legislation enacted in 1978 relating to employees who receive educational assistance from their employers. Without action on the part of the Congress, this valuable piece of legislation will expire at the end of this year.

The higher education community, in conjunction with labor organizations and the corporate community, urged the adoption of this legislation in 1978, which rectified impediments to providing employer-funded educational assistance for employees. Prior to 1978, an employee, in order to receive non-taxable educational assistance from his or her employer, must have undergone training related strictly to his or her current job. This provision discriminated between the limited range of options available to individuals in lower level jobs, especially women and minorities, as opposed to those in managerial capacities who had a broader range of non-taxable educational assistance available to them.

In addition, interpretations by varying Internal Revenue Service agents as to what courses qualified as "job-related" created a chilling impact on individuals participating in the program by generating fear that the education they were receiving might has caused them to incur taxable income. This situation was further complicated by potential retroactive employer tax liability when courses that were paid for were held to be additional employee compensation and liability was assessed on companies for failure to withhold.

Fortunately, the Employer Educational Assistance provisions of the Revenue Act of 1978 (Public Law 95-600) provided that educational assistance by the employer is tax free to the employee if the educational assisance program is operated in compliance with several restrictions. This law, which has provided a substantial incentive for employers to provide employer-supported educational and training programs, has been embraced on an increasing basis by corporations throughout the country. The law provides adequate safeguards that ensure that the program provided does not discriminate in favor of officers, shareholders, or highly compensated employees and that the program does not contain frivilous courses relating to sports, games, or hobbies.

One Dupont Circle, Washington, D.C. 20036-1193 (202) 833-4736

S. 249 would continue to eliminate confusion and inequities in the law and provide a substantial incentive for employee self improvement. We therefore urge your Subcommittee to approve this legislation, so that the valuable programs that have been established will be continued in the years ahead.

This letter is sent on behalf of:

American Association of Community and Junior Colleges
American Association of State Colleges and Universities
American Council on Education
Association of Catholic Colleges and Universities
Association of Jesuit Colleges and Universities
Association of Urban Universities
Council of Independent Colleges
National Association of Independent Colleges and Universities
National Association of Schools and Colleges of the United Methodist Church
National Association of State Universities and Land-Grant Colleges
National University Continuing Education Association

Sincerely,

Sheldon Elliot Steinbach

Sheldon Elliot Steinbach
General Counsel

SES:gfr

**American Society
for
Engineering Education**

washington, d.c.

1983 MAY 26 PM 3:52

REPLY TO

ENGINEERING DEAN'S COUNCIL

Officers 1982-83

[illegible]

Directors

[illegible]

EDC Affiliate Member Representative

[illegible]

Ex officio Board Members

[illegible]

May 23, 1983

Senator Robert Packwood
U. S. Senate
Washington, D.C. 20510

Dear Mr. Packwood:

As Chairman of the Engineering Dean's Council of the American Society of Engineering Education, I am writing in support of S. 249, The Employee Educational Assistance Extension Act. The engineering colleges in the U.S. provide educational services to many engineers employed by industry today. These engineers are typically reimbursed by their employer for the tuition which pays for these educational services.

There have been dramatic increases in the number of employed engineers who continue to study part-time in recent years. This should not be surprising considering rapidly changing technologies which affect this profession. It would be shortsighted for this nation to tax the long-term benefits which accrue to our country's economy from this activity. We all benefit from the increased productivity which engineers at the leading edge of technology can provide. I urge you and your colleagues to pass the legislation which would permanently exempt the education assistance provided by the employer.

The Engineering Dean's Council (EDC) of the American Society for Engineering Education is the only national organization representing the chief administrators of accredited U.S. colleges of Engineering. EDC has over 240 member institutions.

If I can provide any testimony or additional information, please feel free to call me at 303-491-6603.

Sincerely,

Lionel V. Baldwin

Lionel V. Baldwin
Chairman

cc: Lear

AMERICAN SOCIETY FOR TRAINING AND DEVELOPMENT
SUITE 305 • 600 MARYLAND AVENUE, S.W.
WASHINGTON, DC 20024
PHONE: (202)484-2390

Contact: Robert L. Craig

ASTD **news:**

April 29, 1983

SENATE HEARING ON TAXING EMPLOYEES FOR EMPLOYER EDUCATIONAL ASSISTANCE

A panel of witnesses assembled by the American Society for Training and Development (ASTD) testified today before the Taxation and Debt Management Subcommittee of the Senate Finance Committee on S. 249, the Employee Educational Assistance Extension Act. The bill, introduced by Subcommittee Chair Bob Packwood (R-OR) and Sen. Lloyd Bentsen (D-TX), prohibits taxation of employees for educational assistance provided by employers.

Members of the panel are: Barbara Horell, 1983 Chair of the ASTD Minority Network and Continuing Education Coordinator at Health Sciences Center, Columbia, MO; Dale Parnell, Executive Director of the American Association of Community and Junior Colleges; James P. Stone, Manager of Personnel Services, Carolina Power and Light Co., Raleigh, NC; Michael Maibach, Government Affairs Representative, Caterpillar Tractor Corp.; and M. E. Nichols, Executive Vice President, Communication Workers of America, AFL-CIO.

ASTD seeks permanent extension of these employee educational assistance provisions of the Revenue Act of 1978 which exempt employer tuition aid-reimbursement programs and employer-provided courses of instruction from employee gross income if the employer has a qualified plan that is non-discriminatory. Earlier IRS regulations required employees to pay income tax on any educational assistance not directly related to their present job, a practice which discouraged upward mobility and was discriminatory to lower-level workers. Another common problem was that differing interpretations of the regulations among IRS agents often resulted in retroactive tax liabilities for employers.

The current need for employee education and training and its importance to the national economy makes this legislation crucial to employees, organizations and the nation.

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COMMENTS ON S. 249

EMPLOYEE EDUCATION ASSISTANCE EXTENSION ACT

by

The American Society for Training and Development

April 26, 1983

The American Society for Training and Development is especially pleased to make comment on S. 249 since our Society represents those professionals in the world of work who primarily administer employer-employee educational assistance programs. We have nearly 50,000 members in our national organization and in the 138 chapters throughout the United States. Our members are engaged in developing the nation's work force from entry level youth to top management.

We had the privilege of working with Senators Packwood, Javits, Nelson and Moynihan in 1978 in developing the employer educational assistance provisions which were incorporated into the Revenue Act of 1978. Those provisions eliminated the problems of the previous IRS regulations which were causing severe discrimination for lower level employees and were causing confusion, leading to increasing tax court litigation for employers. By broadening the employee income tax exclusion for employer educational assistance, those problems have been eliminated, and more employees have taken advantage of their employer's educational aid. Testimonials to that effect have been presented in the testimony, and letters of support submitted to this hearing. In 1978, we submitted survey data which showed that employee participation was three times greater when the employer's practice was not to withhold income tax for educational aid. Thus, greater proportions of the work force, and especially those at lower levels, are now participating in employer-provided educational assistance.

Now, with all the international economic competition and the changing demographics of the work force, it is imperative that we build the highest quality human capital and work force productivity. Employer educational assistance is playing an increasingly important role toward that end.

As attestation regarding the practicality of these provisions, we have not heard of a single instance of abuse or any other problem with the 1978 provisions to date.

The alternative of not extending these provisions and reverting to the former IRS regulations, which excluded employer educational assistance that was related directly to the employee's present position only, would be severely regressive, and a disincentive to building the quality of the nation's work force.

As we pointed out in 1978, the measure has the added benefit of simplifying the administration of the tax code and should, in the long run, increase the earning power of participating employees, and therefore produce more tax revenue from those increased earnings.

We believe that this is the kind of legislation that is what might be termed "win-win" -- Everyone benefits -- the employees, the employers, and the nation's economy.

# # #

First National Bank
& Trust Company of Lincoln
Box 81008
Lincoln, Nebraska 68501-1008
402 471-1231

FIRST NATIONAL LINCOLN

June 17, 1983

Chief Counsel, Committee on Finance
Dirksen Senate Office Building
Room SD-221
Washington, D. C. 20510

Dear Sir:

Re Generation-Skipping Transfer Tax

We would like to take this opportunity to (1) encourage repeal of Chapter 13 and (2) discuss the Department of the Treasury "Proposal to Simplify and Improve the Generation-Skipping Transfer Tax" as disseminated on April 29, 1983.

We strongly endorse the repeal of Chapter 13. We have felt since it became law that it was totally unworkable. In addition, we have felt that the record-keeping expense of monitoring trusts that would never pay any generation-skipping tax would be exorbitant. The total tax generated by generation-skipping transfers would be quite small under the existing law.

The Department of the Treasury has simplified the generation-skipping tax in its proposal primarily by increasing the generation-skipping exemption to $1,000,000. However, we feel that there will be very little tax actually collected and that the collective amount of effort that will be devoted to this area will be excessive.

Within our Trust Division, which is the third largest bank trust division within the state of Nebraska, we have officer employees who have been with us for as much as twenty-five and thirty years. None of them can remember an instance in which a generation-skipping transfer in excess of $1,000,000 was ever made. If the law that the Department of the Treasury is proposing had been in effect for the fifty-plus years that this Trust Division has been in business, we would have spent untold numbers of hours discussing and keeping track of various types of records, and we would have had absolutely no tax generated by any estate that we have ever handled.

Chief Counsel, Committee on Finance
Page -2-
June 17, 1983

We feel that there should be a reasonable relationship between the amount of effort that is to be expended in generating any tax and the amount of tax that is collected. We do not think there is a reasonable relationship in the tax as proposed by the Department of the Treasury and the effort that will be spent collecting it.

Therefore, we encourage total repeal of generation-skipping transfer taxes.

Sincerely,

Harold J. Dawson, Jr.
Vice President and Manager
Trust Division

HJD:vt

cc: The Honorable J. James Exon
Mr. William C. Smith

sp/01

League of Women Voters of the United States • 1730 M Street, N.W., Washington, D.C. 20036 Tel. (202) 296-1770

STATEMENT OF
DOROTHY S. RIDINGS
PRESIDENT
LEAGUE OF WOMEN VOTERS OF THE UNITED STATES
FOR THE
SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT
OF THE
SENATE COMMITTEE ON FINANCE
ON S.825

The League of Women Voters of the United States (LWVUS) appreciates the invitation to submit testimony on S.825 to explain how social welfare organizations exempt under 501(c)(4) would be affected by the Internal Revenue Service policy reflected by a recent ruling that tax-exempt organizations which exchange or rent mailing lists are producing unrelated business income subject to taxation. Congressional action is necessary to protect the ability of tax exempt organizations, both c(3)s and c(4)s, to maintain their mailing lists through exchanges and rentals. S.825 would exempt from the tax on unrelated business income the income from sale, exchange, or rental of donor or membership lists by certain tax-exempt organizations. However, the bill does not extend relief to 501(c)(4)s. The League of Women Voters of the United States, for reasons set forth below, urges the Senate Finance Committee to include 501(c)(4) organizations in the legislation.

BACKGROUND INFORMATION ON THE LWVUS

The LWVUS is a nonpartisan, volunteer citizen education and political organization made up of 1250 state, regional and local Leagues in all 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Since its founding in 1920, the League of Women Voters has been a vehicle through which people have channeled their energies and talents to promote informed citizen participation in government. Each year tens of thousands of women and men, members of Leagues throughout the nation, serve their communities by providing nonpartisan information on a wide range of public policy issues. The Internal Revenue Service has determined that the LWVUS is a tax-exempt, nonprofit, social welfare organization within the meaning of section 501(c)(4) of the Internal Revenue Code. The work of the League is supported primarily by its constituent local Leagues and members. Substantial contributions also come from business, organized labor, volunteer organizations as well as from tens of thousands of concerned individuals throughout the country, who, through their financial support, have demonstrated their belief in the effectiveness and worth of the League's efforts to improve American government through informed citizen participation.

ARGUMENTS FOR INCLUDING C(4)s in S.825

Tax exempt organizations, whether 501(c)(3)'s or c(4)s, engage in exchanges and rentals of lists to add donors and replace names lost through normal attrition. Exchanges--or rentals when exchanges are not feasible --are essential for nonprofits in order to counter mailing list depletion. Donor and membership lists are, in fact, one of the major means available to nonprofits to fulfill their tax exempt functions. Fundraising through the mail, in the case of the LWVUS, is inextricably intertwined with communicating nonpartisan information to the public.

Recent IRS interpretations which characterize list exchanges and rentals as producing taxable unrelated business income occur at the very time when the nonprofit sector is already financially hard pressed. Cutbacks in federal programs have had a double impact on exempt, voluntary organizations; the demand for their services has increased and the funding to meet such demands, decreased.

As previous witnesses have stressed, the purpose of name exchanges or rentals is to build and maintain donor or member lists and not to compete with commercial operations. Nor do they operate like direct mail business operations. Nonprofit groups enter into exchange or rental agreements to generate names and thus to reach the public with their message and generate the financial contributions essential to continue their important work.

Following receipt of our contribution, that person's name is placed on our "donor list". The League does not exchange its donor list with commercial brokers or agents or with non-charitable organizations. Rather, the exchange or rental of donor names generally occurs only within the nonprofit community, among groups which rely on direct mail for their contributions.

We believe the exemption from tax offered by S.825, if extended to 501(c)(4)s would be consistent with the Congressional intention to grant tax exemption to c(4) organizations. It is particularly consistent with the Congressional intent that income that is related to the exempt purposes of an organization not be subject to tax. It is also consistent with what the Internal Revenue Service has itself approved in limited instances. Without assistance from that legislation we and other c(4)s will be seriously harmed by the recent Internal Revenue Service approach.

CONCLUSION

In conclusion, it is important that the Subcommittee on Taxation and Debt Management be aware of the significance of S.825 to 501(c)(4)s in general and to the League of Women Voters of the United States in particular. It is clear that c(4) organizations would be negatively affected by the recent Internal Revenue Service policy most recently reflected in the ruling declaring that tax-exempt organizations which exchange or rent mailing lists are producing unrelated business income subject to taxation. This IRS policy, if left to stand, will have serious financial implications for the League and for many c(4)s.

S.825, as currently before your subcommittee, seeks to repeal the ruling as it relates to 501(c)(3) groups and veterans' organizations, but does not deal with similar problems faced by 501(c)(4)s - despite the fact that another significant group of non-profit tax exempt organizations will be affected just as dramatically as the 501(c)(3)s. S.825 would apply to c(3) organizations but all of the policy arguments that apply with respect to c(3)s are equally applicable to c(4)s. Therefore, the League of Women Voters of the United States urges that 501(c)(4)s be added to the organizations assisted by S.825 and we further urge the early passage of that legislation.

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May 20, 1983

BY HAND

The Honorable Bob Packwood
Chairman
Subcommittee on Taxation
  and Debt Management
Committee on Finance
SD-221 Dirksen Senate Office Building
Washington, D.C.   20510

Re: April 29, 1983, Hearing On "The Employee Educational Assistance Extension and Improvement Act" (S. 249)

Dear Mr. Chairman:

On behalf of our client, The ERISA Industry Committee (ERIC), this is to confirm for the record of your April 29 hearing on S. 249 that ERIC supports making permanent the provisions of section 127 of the Internal Revenue Code.

As you know, ERIC is an organization of more than one hundred major employers which maintain employee benefit plans. ERIC members include half of the nation's fifty largest industrial companies and represent a broad cross-section of the nation's largest retailers, utilities, banks, and insurers. These companies typically sponsor qualified educational assistance programs for their employees. These programs have been successful and should be continued.

Background

Under section 127, an employee may exclude from his gross income tuition, fees, and the costs of educational books, supplies, and equipment paid for or supplied by his employer. Section 127 was enacted in 1978 in order to eliminate "the need to distinguish job-related educational expenses from personal educational expenses for income tax purposes". S. Rep. No. 95-1263, 95th Cong., 2d Sess. 101 (1978). The education need not be job-related, but it cannot include "hobby" or recreational instruction. An employer's program must be available on a nondiscriminatory basis and must be nondiscriminatory in operation. Thus, the programs do not favor the highly compensated, officers or owners. By its terms, section 127 expires for virtually all employees at the end of this year.

Benefits for Lower Paid and Minorities

The experience of ERIC companies is that educational assistance programs have provided the most significant benefits to entry-level, lower paid, and poorly educated employees, including significant numbers of women and minorities. Many of these employees use these programs to pursue high school equivalency or associate or baccalaureate degrees which qualify them for new or more remunerative positions. Most would have found it difficult, if not impossible, to advance their education without employer assistance.

Significant numbers of employees participate in these programs to pursue education in math, accounting, and computer science. The significant shift in employment opportunities from unskilled or semi-skilled heavy manufacturing to high technology and service industries has created a compelling need for employee education and training in these fields.

Without employer-provided assistance, many feel that those who have taken advantage of these programs would not be able to compete for the higher technology and management positions which afford the greatest employment opportunities and that employers would have significant difficulty obtaining trained and qualified employees. Thus, employer educational assistance programs increase the skilled work force. They benefit individuals taking courses, their employers who provide assistance, and the nation's economy.

We understand that the staff has estimated that the revenue loss from making section 127 permanent would range from $43 million for 1985 to $54 million for 1988. These estimates do not take into account the "feedback" revenue which would result from the higher taxes paid by employees who obtain more remunerative employment as a result of participating in these programs. More important, the estimates of lost revenue are relatively small amounts and cannot take into account fully the other benefits to individuals, society, and the nation's economy which cannot be readily quantified.

The Prior Job-Related Test Is Ambiguous, Unfair, and Unsatisfactory

Permitting section 127 to expire at the end of 1983 would be detrimental to employees, employers, and the Service. All employees would have to include the value of employer-provided assistance in their income, but those employees who could prove that their education was job-related would be able to deduct under section 162 the employer-provided assistance. Others would have no deduction and would be taxable on such assistance.

For example, a highly educated, skilled employee, such as an accountant, computer manager, or a staff attorney, who took a course in his field to remain current, would be able to offset the employer-provided assistance included in income by deducting his educational expenses. However, a less educated person taking courses to qualify for a new position would be allowed no deduction. Thus, the job-related standard discriminates against those who need the training most. If section 127 were allowed to expire, those in higher paying positions would be least affected, and it is feared that many, if not most, entry-level, lower paid employees would no longer take advantage of their employers' programs.

As suggested by the enclosed excerpt from the 1978 Finance Committee Report on section 127, the application of the job-related standard for deductibility of educational expenses was inequitable, was fraught with controversy, and engendered frequent audits. Enforcing such a rule would again be burdensome to the Service, to employers who would attempt to determine whether a proposed course of study satisfied the job-related test, and to employees who would have to make difficult decisions regarding their tax liabilities and who would be subject to challenge on audit. This would discourage offering these programs and participation in them.

Respectfully,

Jerry L. Oppenheimer

JLO/sa
Enclosure
cc: Mr. Colvin

S. Rep. No. 95-1263, 95th Cong., 2d Sess. (1978)

Reasons for change

The committee believes that the treatment of employer-provided educational assistance under present law occasionally gives rise to inequitable administration, adds to the complexity of the tax system, and can act as a disincentive to continuing education, particularly among those at the lower end of the economic scale.

Because ambiguities exist in the "improve or maintain skills" test imposed under present law, the taxability of educational assistance programs of particular employers necessarily depends on IRS agents' case-by-case analyses of the skills needed for the jobs held by each employee participating in such programs.

The "job-related" distinction is often both ambiguous and restrictive. For example, if a person with little or no work experience is employed in an entry-level position and receives training from his employer to advance to a job requiring some greater skills or experience, the value of the training may be taxable. This may discourage self-improvement. If a typist, for example, receives training to be a secretary, or if a secretary receives training in a paralegal program, it might be considered not job-related. Also, if a clerical employee receives computer training, it may be treated as not job-related, even though the employee's job may require computer skills in the future because of normal advances in business technology.

However, the higher the level of job held by an employee, the greater the variety courses or training likely to qualify as related to the employee's job. The committee believes that the unfairness of this anomalous result should be eliminated.

The committee also intends to reduce to the complexity of present law in this area. Not only must the Internal Revenue Service use valuable personnel time in making determinations of taxability, but employees and employers also must justify their positions. The employer also must determine whether income tax withholding and employment taxes apply to reimbursement.

More serious even than the potential inequities of administration and the complexities of the tax law is the disincentive to upward mobility. Although most citizens recognize the need to provide greater access to educational and economic opportunity to those who have had limited access in the past, the tax law presently requires out-of-pocket tax payments for employer-provided educational assistance from those least able to pay, even though they receive only services, not an increased paycheck.

Therefore, the committee provides an exclusion for employer-provided educational assistance. To avoid abuse of this expanded tax-free treatment of educational assistance, the bill limits the exclusion to benefits provided to employees and provides antidiscrimination rules.

NCLR

Raul Yzaguirre
President

National Council of La Raza

20 F St. N.W.
2nd floor
Washington, D.C. 20001
(202)628-9600

April 22, 1983

The Honorable Robert Packwood
U.S. Senator
145 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Packwood:

I am writing to you to express the National Council of La Raza's support for S. 249, the Employee Educational Assistance Extension Act, which would permanently extend the educatinal assistance provisions of the Revenue Act of 1978.

As a national organization representing Hispanic Americans, NCLR is painfully aware of the difficulties faced by minorities and women in attaining job mobility. A major obstacle is the need to obtain additional education and training, while at the same time holding down a full-time job. The tuition aid provisions of the Act make this goal a bit more achievable by assuring that tuition reimbursement by employers is not considered taxable income.

We urge the Taxation and Debt Management Subcommittee and the Finance Committee to act favorably upon S. 249, and thus help assure the continuation of this important means of facilitating upward mobility for minorities and women.

Sincerely,

Raul Yzaguirre
President

RY/em